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Sent: Friday, July 2, 2010 12:53 PM

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Subject: HPNS ETCA Documents

Attachments: SFRA HPNS ETCA 6 9 10.doc; HPS.ETCA.Navy Clean Draft.25 Jun 10.doc; DeltaView Comparison from Navy Clean ETCA 6 25 10.rtf

Categories: Hunters Point

All:

We apologize for confusing everyone with multiple formats, styles and change-tracking methods for the HPNS ETCA documents. I hope this email and the attachments simplifies your review of ETCA documents for next week's meetings.

1. Through the wizardry of our IT department, we scrubbed, cleaned and otherwise sanitized the ETCA provided originally by SFRA for review as part of Barry's June 9 email ("SFRA 6/9/10 Clean ETCA" Attached). We made no changes or edits, but merely provide a "clean" version of the June 9 document to serve as a base-line for changes and edits; however, since that document was undated, I added "SFRA ETCA DRAFT 6/9/2010" to the title page merely to establish its date and provenance.
2. On June 25, the Navy responded and provided a clean version of the ETCA titled: "Navy Clean Draft, 25 June 2010." I attach that also to collect the relevant documents and establish a Navy baseline document.
3. Finally, after abusing our IT wizards again, they compared the two documents electronically to establish a single and hopefully comprehensive document that reflects the Navy's June 25 ETCA against the SFRA June 9 ETCA ("Red-Line" Attached).

Again, I apologize for the confusion, but I hope we will be able to use these two clean documents and comprehensive Red-line going forward as a baseline for all future changes and again, I reiterate, we made no changes to the documents forwarded previously and discussed yesterday.

(As an aside, now that we presented the Navy with a "clean" document, we would welcome their signature, rather than comments, but that's just me being optimistic).

Thanks. George

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**Collective SFRA Changes to Navy March 10 Doc
Sent for Navy Meeting**

EARLY TRANSFER COOPERATIVE AGREEMENT

**COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

AND

**THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
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SAN FRANCISCO, CALIFORNIA**

TABLE OF CONTENTS

CLAUSE NUMBER <u>NUMBER</u>	CLAUSE NAME	PAGE
None	GENERAL PROVISIONS	5
<u>ARTICLE I</u>	<u>SCOPE AND PURPOSE</u>	7
Section 101	Performance of Environmental Services	7
Section 102	Performance Method	7
<u>ARTICLE II</u>	<u>DEFINITIONS</u>	7
Section 201	Cooperative Agreement	7
Section 202	Navy's Representative	7
Section 203	SFRA	8
Section 204	Hunters Point Navy Shipyard	8
Section 205	Administrative Order on Consent ("AOC")	8
Section 206	Navy-Retained Conditions	8
Section 207	CERCLA Record of Decision	8
Section 208	Regulatory Closure	9
Section 209	Navy and Government	9
Section 210	Long-Term Obligations	9
Section 211	Environmental Services	9
Section 212	Cost Cap Insured Conditions	9
Section 213	Additional Insured Conditions	9
Section 214	Uninsured Conditions	10
Section 215	Radiological Materials	10
Section 216	Environmental Insurance Policies	10

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 217	(Reserved)	10
Section 218	Ineligible Work	10
Section 219	Redevelopment Activity	12
Section 220	Reuse Plan	12
Section 222	Area Covered by Environmental Services	13
Section 223	Unexploded Ordnance / Munitions Explosive Concern	13
Section 224	Military Munitions	13
Section 225	Navy Obligations	13
Section 226	Regulatory Oversight	13
Section 227	Regulatory Enforcement Activities	14
Section 228	Grants Officer	14
Section 229	Environmental Regulatory Agency or Agencies	15
Section 230	Covenant to Restrict the Use of Property	15
Section 231	Amended Federal Facilities Agreement	15
<u>ARTICLE III</u>	<u>OBLIGATIONS OF THE PARTIES</u>	15
Section 301	Obligations of the SFRA	15
Section 302	Obligations of the Navy	17
<u>ARTICLE IV</u>	<u>FUNDING LIMITATION AND BUDGETING</u>	19
Section 401	Navy's Funding Limitation	19
<u>ARTICLE V</u>	<u>PAYMENT SCHEDULE</u>	19
Section 501	General	19
Section 502	Payments	19
<u>ARTICLE VI</u>	<u>PAYMENT</u>	20
Section 601	General	20
Section 602	Relation to Prompt Payment Act	20
Section 603	Direct Navy Payment of SFRA's Obligations	21
<u>ARTICLE VII</u>	<u>GENERAL PROVISIONS</u>	21
Section 701	Term of Agreement	21
Section 702	Amendment of Agreement	21
Section 703	Successors and Assigns	21
Section 704	Entire Agreement	21
Section 705	Severability	22
Section 706	Waiver of Breach	22
Section 707	Notices	22
Section 708	Conflict of Interest	23
Section 709	Access to and Retention of Records	23

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 710	Change of Circumstances	22
Section 711	Liability and Indemnity	23
Section 712	Liability and Insurance	25
Section 713	Reports	26
Section 714	Officials Not to Benefit	27
Section 715	Representations	27
Section 716	Excess Funds	27
Section 717	Conveyance of IR Sites 7/18	28
<u>ARTICLE VIII</u>	<u>APPLICABLE LAWS AND REGULATIONS</u>	28
Section 801	Applicable Law	28
Section 802	Governing Regulations	28
Section 803	Environmental Protection	28
<u>ARTICLE IX</u>	<u>PROCUREMENT</u>	29
Section 901	SFRA Contracts	29
Section 902	Preference for Local Residents	29
<u>ARTICLE X</u>	<u>TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION</u>	30
Section 1001	Dispute Resolution	30
Section 1002	Enforcement	31
Section 1003	Termination	31
Section 1004	Effects of Suspension and Termination	32
<u>ARTICLE XI</u>	<u>LEGAL AUTHORITY</u>	33
Section 1101	Legal Authority	33
None	<u>SIGNATURE AND WITNESS</u>	33

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

APPENDICES

Appendix 1	Map of the Hunters Point Naval Shipyard
Appendix 2	Map of the ACES
Appendix 3	Known Conditions
Appendix 4	Environmental Insurance Policies
Appendix 5	RESERVED
Appendix 6	RESERVED
Appendix 7	RESERVED
Appendix 8	RESERVED
Appendix 9	Technical Specifications and Requirement Statement ("TSRS")
Appendix 10	Administrative Order on Consent ("AOC")
Appendix 11	Federal Facilities Agreement, as amended
Appendix 12	Escrow Agreement
Appendix 13	<i>Agreement to Implement the Conveyance Agreement between the United States of America and the San Francisco Redevelopment Agency for the conveyance of Hunters Point Naval Shipyard with Regard to IR Sites 7/18 and the Radiologically-impacted Area around Building 140 dated _____. Delete App 13. Legally enforceable agreement and escrow instructions to insure that Agency has obligation to accept title when conditions for transfer are met. These conditions include FOST acceptable to DTSC, EPA, and RWQB. Draft of escrow instructions to be provided. FFA provisions with respect to IR 7/18 need to be drafted. Will IR 7/18 be excluded from the AOC terms? If so, what if any requirements will be imposed by EPA with respect to this parcel?</i>

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BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

1 **THIS EARLY TRANSFER COOPERATIVE AGREEMENT** ("Agreement") is made
2 by and between the **UNITED STATES OF AMERICA**, acting by and through Naval Facilities
3 Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT**
4 **AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment authority
5 by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of Defense and also a
6 local public authority legally empowered to enter into this Agreement. Hereinafter, the Navy
7 and the SFRA are each sometimes referred to individually as a "Party" and collectively as the
8 "Parties."

9
10 **GENERAL PROVISIONS**

11
12 The Federal Government, for and on behalf of the citizens of the United States of
13 America, acts as the steward of certain real property on which it operates and maintains military
14 facilities necessary for the defense of the United States of America. Certain military facilities are
15 no longer required for that mission, and, in accordance with various base closure statutory
16 authorities, the Department of Defense ("DOD") closed and plans to dispose of real and personal
17 property at those facilities. The Navy is authorized to dispose of real and personal property on
18 Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local reuse
19 organization approved by the City, in accordance with Section 2824 (a) of the National Defense
20 Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of
21 the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The
22 SFRA is a local reuse organization approved by the City of San Francisco to accept conveyance
23 of HPNS property in accordance with the authorities set out above.

24
25 The Parties did execute and enter into that certain *Conveyance Agreement Between the*
26 *United States of America, Acting by and through the Secretary of the Navy, and the San*
27 *Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated
28 March 31, 2004 ("Conveyance Agreement").

29
30 Under the Comprehensive Environmental Response, Compensation and Liability Act
31 ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 completion of all remedial action necessary to protect human health and the environment
2 provided that the property is suitable for transfer for the intended uses and the intended use is
3 consistent with the protection of human health and the environment. Under this early transfer
4 authority, the Navy intends to convey title to, among other property, the portion of HPNS
5 property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the
6 SFRA. The ACES is defined in Section 222 below and shown in Appendix 2. The SFRA
7 assumes responsibility for certain environmental response activities (hereinafter the
8 "Environmental Services," as defined in Section 211 below) for the consideration set forth in this
9 Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response action necessary
10 to protect human health and the environment with respect to any hazardous substance remaining
11 on the ACES on the date of the transfer has been taken, the Navy will deliver to the SFRA an
12 appropriate document containing the CERCLA warranty that all response action necessary to
13 protect human health and the environment with respect to any substance remaining on the
14 property on the date of transfer has been taken. The principal purpose of this Agreement is to
15 facilitate early transfer and redevelopment by providing the contractual vehicle under which the
16 SFRA will perform the Environmental Services in the ACES and be compensated for such
17 performance.

18
19 It is in the public interest and will be beneficial to the Navy and the SFRA for the SFRA
20 to cause to be performed the Environmental Services at the ACES. As set forth in the Amended
21 Federal Facilities Agreement ("Amended FFA"), as defined in Section 231 below, the Navy will
22 resume CERCLA responsibility for compliance with the Amended FFA in the event of a Finding
23 of Default as provided in the Administrative Order on Consent ("AOC") as hereinafter defined,
24 or upon a failure of the Navy to continue its funding obligations, as described in Article IV, or
25 upon a termination of this Agreement pursuant to Sections 701 and 1003 below.
26 Notwithstanding any other provisions of this Agreement, the Navy is not a party to, bound by, or
27 responsible for compliance with any of the provisions of the AOC. The Navy's obligations
28 pursuant to the Amended FFA are not affected by this Agreement with respect to Navy Retained
29 Conditions, as defined in Section 206.

30
31 This Agreement benefits the Navy and the SFRA because it facilitates early transfer and
32 immediate reuse by allowing the SFRA to cause to be performed certain environmental
33 remediation activities and simultaneously facilitates redevelopment as defined herein. This
34 Agreement, executed as part of an early transfer, facilitates SFRA access and control to the
35 ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section 220
36 below). In addition, early transfer will allow the Navy to convey title in compliance with
37 CERCLA requirements at an earlier date than could otherwise be achieved. This Agreement is a
38 Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section
39 2701(d)(1).

40
41 In accordance with 42 U.S.C. 9620 (h)(3)(C)(iii), after all response action necessary to
42 protect human health and the environment with respect to any hazardous substances remaining
43 on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

appropriate document containing the CERCLA warranty that "all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken ..."

The Navy and the SFRA have entered into this Agreement for the purpose of establishing the terms and conditions necessary to obtain Regulatory Closure for the ACES and ensure the execution of Long-Term Obligations associated with Regulatory Closure. The Navy agrees to provide funds to the SFRA in accordance with and subject to the provisions of this Agreement and to undertake and complete its obligations under Section 302 hereof. The SFRA agrees to perform the Environmental Services in accordance with and subject to the provisions of this Agreement.

Article I SCOPE AND PURPOSE

Section 101. Scope of Agreement

The SFRA agrees to assume the Navy's responsibility to perform the Environmental Services in accordance with and subject to the provisions of this Agreement subject to the receipt of funding from the Navy pursuant to Section 302(a), and Articles IV, V and VI The SFRA is does not assuming assume by this Agreement any obligation or liability not expressly assumed identified as such by the SFRA in this Agreement.

Section 102. Performance Method

This Agreement, the CERCLA RODs and associated Remedial Design reports, and AOC together establish the process for the SFRA's performance of the Environmental Services. By the execution of this Agreement, the Navy concurs with the Regulatory Closure process set forth in this Agreement and the CERCLA RODs and associated Remedial Design reports, and the AOC.

Article II DEFINITIONS

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

The term "Navy's Representative" means the for execution purposes is the Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 203. SFRA

The term "SFRA" means the San Francisco Redevelopment Agency or "SFRA" is the , a Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent ("AOC")

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, HPS Development Co., LP, and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The term "Navy-Retained Conditions" means: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; and (iii) any activity identified as the responsibility of the Navy in the Amended FFA; and (iv) Uninsured Conditions. The term Navy-Retained Conditions The term "NRC" does not include Ineligible Work as defined in Section 218 below.

Section 207. CERCLA RODs Records of Decision

The term "CERCLA Records of Decision" or "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, 2009.

Section 208. Regulatory Closure

The Term "Regulatory Closure" as applied to the entire ACES, means issuance of a Certification of Completion of Remedial Action or of an Interim certification of Completion of Remedial Action for areas encompassing each Cost Gap Insured condition and Additional Insured Condition within the ACES. As applied to a portion of the ACES or to a particular Pollution Condition, the term means the issuance of a Certification of Completion of Remedial

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Action or of an Interim Certification of Completion of Remedial Action for that area encompassing that portion of the ACES or that Pollution Condition.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed after a RACR has been approved pursuant to the AOC to address Cap Insured Conditions and Additional Insured Conditions throughout the ACES.

Section 211. Environmental Services

The term "Environmental Services" means environmental remediation activities required funded by this Agreement solely with respect and limited to the Cost Cap Insured Conditions and Additional Insured Conditions necessary to obtain Regulatory Closure throughout the ACES, and associated with Long-Term Obligations except to the extent that such Long-Term Obligations are attributable to Navy Retained Conditions. The term "Environmental Services" does not include the performance of Navy-Retained Conditions; Ineligible Work; any work associated with implementing amendments of, or Explanations of Significant Differences (ESDs) with, the CERCLA RODs; any work associated with the migration of a Pollution Condition from outside the ACES onto, into, or under the ACES; or any work associated with the migration of a Pollution Condition from the ACES onto, into or under Parcel F, except the extent such migration is caused or contributed to by the negligence of SFRA or any party acting on its behalf.

Section 212. Cost Cap Insured Conditions

The term "Cost Cap Insured Conditions" means Pollution Conditions that are within the coverage grant and not excluded of the cost overrun insurance component of the Environmental Insurance Policies, and includes such Pollution Conditions even after the expiration of the term of, or exhaustion of the limits of, the cost overrun insurance component of the Environmental Insurance Policies, except to the extent such Pollution Condition is a Navy-Retained Condition. [Note: If Navy retained, it would not be in the coverage grant.]

Section 213. Additional Insured Conditions

The term "Additional Insured Conditions" means those Pollution Conditions in the ACES that are not Cost Cap Insured Conditions but are otherwise within the coverage grant and not excluded of the Environmental Insurance Policies. This term also includes any Pollution

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Condition that otherwise would have been an Additional Insured Condition but for which coverage was denied by the insurance provider solely due to the failure of the SFRA or named insured to comply with any requirements as set forth in the Environmental Insurance Policies, but only to the extent of specific costs that would have otherwise been funded by the Environmental Insurance Policies but for such failure of the SFRA or the named insured.

Section 214. Uninsured Condition(s)

The term "Uninsured Condition(s)" means those Pollution Conditions that are not "Cost Cap Insured Conditions" or "Additional Insured Conditions".

Section 215. Radiological Materials *[Need to discuss further]*

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides, including the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides, or are otherwise subject to regulatory standards that would be applied in the absence of such radiological materials.

Section 216. Environmental Insurance Policies

The term "Environmental Insurance Policies" means the environmental insurance which the SFRA shall procure in accordance with Section 712.e of this Agreement.

Section 217. Pollution Condition means ...*[Insert the exact definition from the Environmental Insurance Policies]*

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any one or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering of LBP from buildings and structures.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 b. Cleanup of pesticides and herbicides applied in accordance with the requirements
2 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors
3 including, but not limited to, chlordane properly applied as a termiticide to presently existing
4 wooden structures, their foundations, and underlying soils.

5 c.

6 d. Additional remediation necessary to implement a change in land use from the land
7 uses set forth in the 1997 Reuse Plan.

8
9 Management and disposal of construction and demolition debris, except to the extent such debris
10 is generated in the course of an activity required by the AOC, such as the demolition of
11 hardscape necessary to install a monitoring well.

12
13 e. Clean up of contaminants within existing buildings and structures, that have not
14 been released into the environment; except for removal of liquids, solids, gases, sediments,
15 and/or sludges from and including oil/water separators and other equipment and containment
16 vessels within or beneath structures to the extent the equipment and vessels were not reasonably
17 discovered by visual inspection during a pre-conveyance walk-through in which both parties
18 participated.

19
20 f. Any activity associated with disturbing or altering a cover, cap or other
21 component of an environmental remedy installed pursuant to the AOC, except to the extent such
22 disturbance or alteration is necessary to comply with the AOC as a result of actual or potential
23 remedy failure, or as a result of addressing Pollution Conditions other than those addressed by
24 the cover, cap or other environmental remedy.

25
26 g. Non-cleanup environmental compliance activities relating to
27 redevelopment/construction following conveyance (e.g., compliance with air quality permit
28 requirements for control of fugitive dust emissions that are not contaminated with hazardous
29 substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES")
30 stormwater discharge permit requirements regulating excavation/disturbance of soil that is not
31 contaminated with hazardous substances or petroleum).

32
33 h. Any other work or activity that is not related to: (1) achieving "Regulatory
34 Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing
35 associated "Long-term Obligations."

36
37 i. All Regulatory Enforcement Activities.

38
39 j. Cleanup that is required as a result of a violation of: (i) use restrictions by the
40 SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed
41 covenant or IC applicable to the ACES.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

k. Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA RODs, AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

Section 219. Parcel F

Parcel F shall mean the submerged area more particularly described in Exhibit ____.

Section 220. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such Redevelopment Plan has been amended as of the date of the execution of this Agreement by the following documents: (i) XXXX and (ii) XXXX, all in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

Section 221. Reserved??

Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2. , and specifically excludes IR Sites 7/18 and the radiologically-impacted area.

Section 223. Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 225. Technical Specifications and Requirement Statement or TSRS

The term "Technical Specifications and Requirement Statement or TSRS" means the statement of work included in Appendix 9.

Section 226. Regulatory Oversight

The term "Regulatory Oversight" includes the following services provided by EPA, DTSC, and RWQCB the United States Environmental Protection Agency, the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("Water Board") which are considered allowable costs under this Agreement.

- a. Technical review of documents or data;
- b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);
- c. Site visits other than enforcement inspections;
- d. Technical Review Committee (TRC) or appropriate community outreach program if applicable; Administration of this Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;
- e. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;
- f. Independent quality assurance/quality control samples not to exceed ten percent of the samples collected.

Section 227. Regulatory Enforcement Activities

In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities" includes:

- a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or

b. Activities associated with USEPA, DTSC, RWQCB, the Water Board, CDPH, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking, or preparing to take, enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

Section 228. Grants Officer

The term Grants Officer means the Director of Acquisition, NAVFACENGCOM.

Section 229. Environmental Regulatory Agency or Agencies

The term "Environmental Regulatory Agency or Agencies" means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("Water Board RWQCB").

Section 230. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to the ACES.

Section 231. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and the RWQCB Water Board dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

Section 232. Petroleum Corrective Action Plans *[Delete this section if all PCAP work is completed prior to transfer]*

The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective concurrent with the Effective Date and addressing petroleum releases associated with the ACES that are not otherwise addressed within the CERCLA RODs.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 233. Remedial Action Closeout Report or RACR

The term "Remedial Action Closeout Report or RACR" means *[INSERT exact definition from AOC (to be written)]*

Article III OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the SFRA

In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA assumes responsibility for performing the Environmental Services. Subject to the provisions of Section 302 hereof, the SFRA agrees that it shall perform and complete or cause to be performed and completed the necessary Environmental Services to address Known Conditions and Insured Unknown Conditions as defined and provided in the TSRS the Insured Scope of Work and Insured Conditions as defined herein. The Environmental Services shall be conducted in a manner generally consistent with the TSRS, except to the extent SFRA reasonably determines it is necessary to vary from the TSRS in order to comply with the CERCLA RODS or a directive issued by an Environmental Regulatory Agency. [Note: Need to see form and content of TSRS]

a. If the SFRA transfers a portion of the ACES to another party, SFRA shall remain responsible for performing the Environmental Services on that portion. The SFRA shall ensure that the initial caps/covers required by the CERCLA RODs shall be installed throughout the ACES before transferring its final property interest within the ACES to a third party no later than seven (7) years after the date of execution of this Agreement by both parties, whichever shall occur first.

b. The SFRA's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the SFRA's obligations shall be limited to only that portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.b hereof. Any dispute with respect to delineating the portion of the Environmental Services performed with the use of such partial funding shall be subject to dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable progress toward performing Environmental Services.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 c. The SFRA shall conduct audits and shall provide performance and financial
2 reports to the Navy in accordance with Section 301.f. below.

3
4 d. The SFRA shall cause the performance of the Environmental Services in a
5 manner that will not unreasonably delay any action that the Navy determines that it may
6 undertake in order to address Navy-Retained Conditions.

7
8 e. The SFRA shall indemnify the Navy pursuant to the terms of Section 711 hereof.

9
10 f. Non-Federal Audits, Performance Reporting & Financial Reports.

11
12 (1) The SFRA is responsible for obtaining annual audits in accordance with
13 the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular
14 A133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall
15 be made by an independent auditor in accordance with generally accepted government auditing
16 standards covering financial audits. The costs of audits made in accordance with this section are
17 allowable costs under this Agreement.

18
19 (2) The SFRA is responsible for assuring compliance with applicable Federal
20 requirements and that performance goals are being achieved. In accordance with 32 CFR 33.40,
21 the SFRA shall submit timely performance reports to the Navy. All reports shall be submitted to
22 the Navy on the same schedule basis as the SFRA, its developer, or its contractors submit such
23 information to the insurance provider.

24
25 (3) In accordance with 32 CFR 33.41, the SFRA shall submit timely financial
26 status reports to the Navy. All reports shall be submitted to the Navy on the same schedule basis
27 as the SFRA, its developer, or its contractors submit such information to the insurance provider.

28
29 g. The SFRA shall provide the Navy notice within thirty (30) calendar days of
30 receiving notice by Environmental Regulatory Agencies, or other third parties, of the existence
31 of any Pollution Condition at the ACES that suggests that an action is necessary for which the
32 SFRA is not responsible under this Agreement. If the SFRA is served with a complaint or
33 written notice by an Environmental Regulatory Agency, the SFRA shall provide the Navy with a
34 copy of such document no later than seven (7) calendar days following the service of such
35 receipt document. If the SFRA discovers a potential Pollution Condition in the ACES that the
36 SFRA reasonably believes is a Navy-Retained Condition, the SFRA shall make an initial
37 determination whether such potential Pollution Condition is in fact a Navy-Retained Condition
38 before incurring such costs or obligations. If, despite using commercially reasonable efforts to
39 avoid incurring such costs to take action it reasonably deems necessary and before it is able to
40 meet and confer with the Navy in accordance with Section 302(h) below, the SFRA incurs
41 uninsured costs or obligations with respect to a Navy-Retained Condition, the SFRA may seek
42 reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section
43 401, hereof, and the dispute resolution provisions of Section 1001 hereof. Nothing in this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Agreement shall be construed as a Navy promise or obligation to provide such reimbursement, provided, however, subject to its funding limitations and the Anti-Deficiency Act, the Navy shall use reasonable efforts to seek to obtain funds to reimburse the SFRA for the SFRA's reasonable costs incurred under this Section 301.g, if SFRA seeks reimbursement.

h. Within thirty (30) calendar days of either making a determination pursuant to 301.g or otherwise receiving actual notice that there is a Navy Retained Condition at or affecting the ACES, the SFRA shall notify the Navy of such condition. The exception to this duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such discovery. The Parties shall, within a reasonable time under the circumstances, meet and confer in consultation with the appropriate Environmental Regulatory Agency or Agencies, regarding any appropriate coordination that might be required in order to address the circumstances. As part of such meet and confer obligation, the Parties shall in good faith endeavor to agree as to whether such condition is within the scope of the Environmental Services or is a Navy-Retained Condition, and if a Navy-Retained Condition, whether the Navy or the SFRA will perform the work to address such Navy-Retained Condition, and if to be performed by the SFRA, identify the Navy's funding source and schedule of payment. If the Parties cannot agree whether a Pollution Condition constitutes a Navy-Retained Condition, or disagree about the action or funding required in response to any such condition, the matter may be submitted to a dispute resolution under Section 1001.

i. Further language to allow the SFRA to react to mundane NRCs in an emergency or expedited context.

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any Navy-Retained Conditions NRCs that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections pursuant to the LUC RD and CERCLA RODs, LUC RD, AOC, CRUP and deeds and prepare shall assure preparation of any applicable compliance monitoring reports and certificates associated with environmental restriction on the use of the ACES.

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one advance payment which shall be made within -- (--) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the SFRA. The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this shall not

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA, which approval shall not be unreasonably withheld.

c. Within a reasonable time after the SFRA has provided the Navy with: proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and a written request to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. The Navy shall comply with the procedures and terms set forth in Section 301 with respect to discovery of potential Pollution Conditions that may be Navy-Retained Conditions.

Except to the extent any portion of Ineligible Work is a Navy-Retained Condition, the Navy shall have no responsibility for Ineligible Work, and no funds provided under Section 302(a) may be used by the SFRA to fund Ineligible Work; provided, however, that nothing in this Agreement shall prohibit the SFRA, within its sole discretion, from performing Ineligible Work at the SFRA's own cost and expense.

e. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law. The Navy shall comply with the procedures and terms set forth in Section 301 with respect to discovery of potential Pollution conditions that may be NRCs.

f. The Navy shall cause its performance of any activity with respect to Navy Retained Conditions or any other Pollution Condition for which the Navy has responsibility at or affecting the ACES to be conducted in a manner that will not unreasonably delay or interfere with SFRA's performance of the Environmental Services.

Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

The Maximum Navy Funding Obligation for the Environmental Services to be performed

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation.

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

INSERT THE UIC AND LINE OF ACCOUNTING HERE

Article V PAYMENT SCHEDULE

Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

(1) The SFRA shall maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds from the escrow account to the SFRA and their disbursement by the SFRA to an independent third party payee.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 (2) Within a reasonable period of time after receiving the advance payment
2 from the escrow account, the SFRA shall deposit the funds with an independent third party
3 payee. Such independent third party payee shall be responsible for making all payments to a
4 subsequent transferee and/or environmental contractor(s), with whom the SFRA enters into an
5 agreement to perform the Environmental Services or to supervise the performance of the
6 Environmental Services. Funds shall be considered disbursed by the SFRA when the following
7 has occurred:

8
9 (A) The SFRA does not retain possession of the funds;

10
11 (B) The SFRA cannot get the funds back upon demand (this does not
12 include allowable costs incurred by the SFRA for which the SFRA requests proper
13 reimbursement from the independent third party payee);

14
15 (C) The independent third party payee is an independent stakeholder
16 from the SFRA and the party or parties with whom the SFRA enters into an agreement to
17 perform the Environmental Services or supervise the performance of the Environmental Services
18 and not the agent of the SFRA;

19
20 (D) The SFRA receives something in exchange for the transfer of
21 funds to the independent third party payee, such as a contractual promise to hold the funds and
22 make payments in accordance with specified procedures.

23
24 (3) Any agreement by the SFRA with an independent third party payee must
25 also include the above provisions and satisfy the requirements of 32 CFR §33.21(c).

26
27 (4) Interest. Any interest earned on the advance payment while in the escrow
28 account pending transfer to the SFRA and any interest earned on the advance payment by the
29 SFRA prior to the disbursement of those funds by the SFRA to the independent third party payee
30 must be returned to the Navy in accordance with 32 CFR §33.21(h)(2)(i). However, any interest
31 earned on those funds after disbursement from the SFRA to the independent third party payee in
32 accordance with Section 502.a. (2)(A)-(D) are considered funds to be utilized for the purposes
33 of this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. No Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. The requirements and provisions described in Subsections 701.a and 701.b below shall survive such termination, but only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above:

a. SFRA requirements to maintain compliance with Regulatory Closure and any applicable Long-Term Obligations including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;

b. the SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this Agreement and any

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 additional records, book papers and documents that are otherwise required to be retained under
2 the AOC. This includes all such records in automated forms ("Records") that are within the
3 SFRA's custody or control, and that relate to its performance under this Agreement. This right of
4 access excludes any attorney-client communications, attorney work product, or any other legally
5 privileged documents. The SFRA shall retain required records intact in their original form, if not
6 the original documents, or in another form if the Navy approves. Such approval shall not be
7 unreasonably withheld. SFRA record retention requirements shall extend for at least three (3)
8 years following the completion or the termination of this Agreement. The SFRA shall allow the
9 Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA
10 seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the
11 Navy determines that more immediate entry is required by special circumstances. Any such
12 entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any
13 officer, agent, employee, or contractor thereof.

14 15 **Section 710.** Change of Circumstances

16
17 Each Party will promptly notify the other Party of any legal impediment, change of
18 circumstances, pending litigation, or any other event or condition that may adversely affect such
19 Party's ability to perform this Agreement.

20 21 **Section 711.** Liability and Indemnity, Waiver and Release

22 23 a. The SFRA's Obligations and Limited Waiver of Statutory Rights

24
25 (1) In consideration of the Navy's payment to the SFRA under Section 302
26 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon
27 receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the
28 following, provided, however the SFRA's indemnification obligations under this subparagraph
29 (1)(a) shall in no event apply to Navy-Retained Conditions or NRCs which are Uninsured
30 Conditions except to the extent that the NRCs are adversely affected and aggravated by the
31 negligent or wrongful actions of the SFRA, its contractors, or its successors in interest:

32
33 (A) any claims incurred in responding to Pollution Conditions in the
34 ACES and which are within the scope of Environmental Services; or address otherwise any
35 "Ineligible Work" as set forth in Section 218 performed by or on behalf of the SFRA;

36
37 (B) oversight costs for any remedy implemented by the SFRA to the
38 extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this
39 Agreement;

40
41 (C) all claims for personal injury or property damage to the extent
42 caused by the SFRA or its contractors in the course of performing the Environmental Services;
43

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 (D) all natural resource damage claims pursuant to 42 U.S.C. Section
2 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such
3 damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its
4 contractors or its successors in interest;

5
6 (E) all costs arising from the performance of the Environmental
7 Services which SFRA performs or causes to be performed;

8
9 (F) all costs of additional remediation required on or within the ACES
10 as a result of a change in land use from that upon which the initial remedial action selection
11 decision was based when Regulatory Closure was completed;

12
13 (G) all costs associated with the correction of any failure of any Navy-
14 selected remedy implemented by the SFRA, but only to the extent such costs are directly
15 attributable to the poor workmanship or negligence of the SFRA or its contractors in the
16 performance of said implementation;

17
18 (H) all costs arising from the correction of any failure of any remedy
19 both selected and implemented by the SFRA; and

20
21 (I) all costs arising from or associated with claims addressed in the
22 Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

23
24 (2) With regard to the ACES, the Parties agree that the SFRA has provided
25 financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C.
26 Section 9620(h)(3)(C)(ii).

27
28 (3) Except as otherwise expressly provided by this Agreement, this
29 Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA
30 may have, in the absence of this Agreement, to take legal action to require the Navy to act with
31 respect to Navy-Retained Conditions NRCs, or to seek damages resulting from the Navy's
32 performance or failure to perform any actions with respect to Navy-Retained Conditions NRCs.
33 Except as otherwise expressly provided by this Agreement, this Agreement shall also not be
34 construed to limit, expand or otherwise affect any right that the Navy may have, in the absence
35 of this Agreement, to take legal action against the SFRA.

36
37 (4) Nothing in this Section creates rights of any kind in any person or entity
38 other than the Navy and the SFRA.

39
40 (5) The SFRA and the Navy agree that the Environmental Services to be
41 caused to be performed by the SFRA in accordance with the terms of this Agreement does not
42 include any work relating to, nor is the SFRA responsible for indemnification of the Navy for
43 any work related to, NRCs except to the extent that the NRCs are adversely affected and

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest. Navy-Retained Conditions.

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of Cost Cap Insured Conditions and Additional Insured Conditions environmental within the scope of Environmental Services and; environmental conditions in the ACES and within the scope of Environmental Services, for Known Conditions and Insured Unknown Conditions; and

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to Navy-Retained Conditions NRCs; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD, except to the extent such disturbance or alteration is necessary to comply with the AOC as a result of potential or actual remedy failure, or as a result of addressing Pollution Conditions other than those addressed by the cover, cap or other environmental remedy. *In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid pursuant to this Agreement.*

(D) Any personal injury or property damage to the extent that it did not occur prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the SFRA may have against the Navy.

c. General Liability Policy Provisions: All general liability insurance which the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

d. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

e. Environmental Insurance Requirements. Prior to the conveyance of any portion of the ACES to SFRA, SFRA shall procure environmental insurance policies approved by the Navy, which approval shall not be unreasonably withheld, providing "cost cap" or "stop loss" coverage for cost overruns associated with implementing the work required by the CERCLA RODs and further providing pollution legal liability or similar coverage, to the extent available, for cleanup of certain Pollution Conditions not addressed by the CERCLA RODs and for third party liability claims associated with Pollution Conditions.

f. A Certificate of Insurance shall be furnished to the Naval Facilities Engineering Command Grants Officer on an annual basis evidencing the above insurance coverage is bound.

Section 713. Reports

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within ten (10) business days of the Navy's information request.

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 715. Representations

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

(3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to Navy-Retained Conditions NRCs, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

Article IX PROCUREMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

b. Definition. In this section, the term "base closure law" means the following:

(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) The Defense Base Closure and Realignment Act of 1990, as amended (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

c. Applicability. Any preference given under subsection (a) shall apply only to contracts entered into after the base closure law was enacted.

Article X

TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement, for noncompliance of Grantee or subgrantee shall include:

a. Temporary withholding cash payments pending correction of the deficiency by the SFRA or Sub-grantee or more severe enforcement action by the awarding agency;

b. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;

c. Wholly or partly suspending or terminating the current award for the SFRA's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.

d. Withholding further awards under this Agreement; and

e. Taking other remedies that may be legally available.

Section 1003. Termination

a. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.

b. Reserved.

c. Reserved.

d. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in
2 its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has
3 expired. The existence of a material breach shall be finally determined under the dispute
4 resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary
5 in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises
6 from any failure to make a required payment under this Agreement.

7
8 e. If this Agreement is terminated for reasons other than those set forth in Section
9 701 above, the SFRA shall immediately:

- 10 (1) Stop work;
- 11 (2) Place no further subcontracts or orders (referred to as subcontracts in this
12 clause) for materials, services, or facilities;
- 13 (3) Terminate all subcontracts;
- 14 (4) With approval or ratification to the extent required by the Navy, settle all
15 outstanding liabilities and termination settlement proposals arising from the termination of any
16 subcontracts; any such approval or ratification will be final;
- 17 (5) Take any action that may be necessary to protect human health or the
18 environment against imminent and substantial endangerment thereto, or to protect and preserve
19 any Navy-owned property at the ACES, as the Grant Officer may direct; and
- 20 (6) Return or cause to be returned to the Navy any funds held by the SFRA or
21 the Escrow Agent not otherwise committed for allowable costs of payment for Environmental
22 Services performed in accordance with this Agreement.

23
24 The SFRA agrees to insert such provisions in its contracts, and to require that such
25 provisions be placed in any subsequent subcontracts between the SFRA's contractors and their
26 subcontractors, so as to effect the provisions above.

27
28 f. If this Agreement is terminated under this Section 1003, the status of the parties
29 with respect to Pollution Conditions at the ACES shall revert to as the status that existed
30 immediately preceding the effective date of this Agreement.

31
32 g. A party's right to terminate, and any determination of funds available for
33 reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in
34 Section 1001 above.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

(2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.

b. The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Article XI LEGAL AUTHORITY

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____

NAME:

TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____

Mr. Robert Griffin

Assistant Commander for Acquisition, Naval Facilities Engineering Command

Dated: _____

Navy Clean Draft, 25 Jun 2010
(HPS.ETCA.Navy Clean Draft.25 Jun 10.doc)

EARLY TRANSFER COOPERATIVE AGREEMENT

**COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

AND

**THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
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THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA
TABLE OF CONTENTS**

CLAUSE NUMBER	CLAUSE NAME	PAGE NUMBER
None	GENERAL PROVISIONS	5
<u>ARTICLE I</u>	<u>SCOPE AND PURPOSE</u>	7
Section 101	Performance of Environmental Services	7
<u>ARTICLE II</u>	<u>DEFINITIONS</u>	7
Section 201	Cooperative Agreement	7
Section 202	Navy's Representative	7
Section 203	SFRA	8
Section 204	Hunters Point Navy Shipyard	8
Section 205	Administrative Order on Consent ("AOC")	8
Section 206	Navy-Retained Conditions	8
Section 207	CERCLA Record of Decision	8
Section 208	Regulatory Closure	9
Section 209	Navy and Government	9
Section 210	Long-Term Obligations	9
Section 211	Environmental Services	9
Section 215	Radiological Materials	10
Section 216	Environmental Insurance Policies	10
Section 217	(Reserved)	10
Section 218	Ineligible Work	10
Section 219	Redevelopment Activity	12
Section 220	Reuse Plan	12
Section 222	Area Covered by Environmental Services	13

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 223	Unexploded Ordnance / Munitions Explosive Concern	13
Section 224	Military Munitions	13
Section 225	Navy Obligations	13
Section 226	Regulatory Oversight	13
Section 227	Regulatory Enforcement Activities	14
Section 228	Grants Officer	14
Section 229	Environmental Regulatory Agency or Agencies	15
Section 230	Covenant to Restrict the Use of Property	15
Section 231	Amended Federal Facilities Agreement	15
<u>ARTICLE III</u>	<u>OBLIGATIONS OF THE PARTIES</u>	15
Section 301	Obligations of the SFRA	15
Section 302	Obligations of the Navy	17
<u>ARTICLE IV</u>	<u>FUNDING LIMITATION AND BUDGETING</u>	19
Section 401	Navy's Funding Limitation	19
<u>ARTICLE V</u>	<u>PAYMENT SCHEDULE</u>	19
Section 501	General	19
Section 502	Payments	19
<u>ARTICLE VI</u>	<u>PAYMENT</u>	20
Section 601	General	20
Section 602	Relation to Prompt Payment Act	20
Section 603	Direct Navy Payment of SFRA's Obligations	21
<u>ARTICLE VII</u>	<u>GENERAL PROVISIONS</u>	21
Section 701	Term of Agreement	21
Section 702	Amendment of Agreement	21
Section 703	Successors and Assigns	21
Section 704	Entire Agreement	21
Section 705	Severability	22
Section 706	Waiver of Breach	22
Section 707	Notices	22
Section 708	Conflict of Interest	23
Section 709	Access to and Retention of Records	23
Section 710	Change of Circumstances	22
Section 711	Liability and Indemnity	23
Section 712	Liability and Insurance	25

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 713	Reports	26
Section 714	Officials Not to Benefit	27
Section 715	Representations	27
Section 716	Excess Funds	27
<u>ARTICLE VIII</u>	<u>APPLICABLE LAWS AND REGULATIONS</u>	28
Section 801	Applicable Law	28
Section 802	Governing Regulations	28
Section 803	Environmental Protection	28
<u>ARTICLE IX</u>	<u>PROCUREMENT</u>	29
Section 901	SFRA Contracts	29
Section 902	Preference for Local Residents	29
<u>ARTICLE X</u>	<u>TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION</u>	30
Section 1001	Dispute Resolution	30
Section 1002	Enforcement	31
Section 1003	Termination	31
Section 1004	Effects of Suspension and Termination	32
<u>ARTICLE XI</u>	<u>LEGAL AUTHORITY</u>	33
Section 1101	Legal Authority	33
None	<u>SIGNATURE AND WITNESS</u>	33

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

APPENDICES

Appendix 1	Map of the Hunters Point Naval Shipyard
Appendix 2	Map of the ACES
Appendix 3	Known Conditions
Appendix 4	Environmental Insurance Policies
Appendix 5	RESERVED
Appendix 6	RESERVED
Appendix 7	RESERVED
Appendix 8	RESERVED
Appendix 9	Technical Specifications and Requirement Statement ("TSRS")
Appendix 10	Administrative Order on Consent ("AOC")
Appendix 11	Federal Facilities Agreement, as amended
Appendix 12	Escrow Agreement
Appendix 13	<i>Agreement to Implement the March 31, 2004 Conveyance Agreement between the United States of America and the San Francisco Redevelopment Agency for the conveyance of Hunters Point Naval Shipyard with Regard to IR Sites 7/18 and the Radiologically-impacted Area around Building 140 dated _____. Delete App 13. Legally enforceable agreement and escrow instructions to insure that Agency has obligation to accept title when conditions for transfer are met. These conditions include RACR, FOST acceptable to DTSC, EPA, and RWQB. Draft of escrow instructions to be provided. FFA provisions with respect to IR 7/18 need to be drafted. Will IR 7/18 be excluded from the AOC terms? If so, what if any requirements will be imposed by EPA with respect to this parcel?</i>

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
A N D
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

1 **THIS EARLY TRANSFER COOPERATIVE AGREEMENT** ("Agreement") is
2 made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval
3 Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT**
4 **AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment
5 authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of
6 Defense and also a local public authority legally empowered to enter into this Agreement.
7 Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party"
8 and collectively as the "Parties."

9
10 **GENERAL PROVISIONS**

11
12 The Federal Government, for and on behalf of the citizens of the United States of
13 America, acts as the steward of certain real property on which it operates and maintains
14 military facilities necessary for the defense of the United States of America. Certain military
15 facilities are no longer required for that mission, and, in accordance with various base closure
16 statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real
17 and personal property at those facilities. The Navy is authorized to dispose of real and personal
18 property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local
19 reuse organization approved by the City, in accordance with Section 2824 (a) of the National
20 Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section
21 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-
22 160). The SFRA is a local reuse organization approved by the City of San Francisco to accept
23 conveyance of HPNS property in accordance with the authorities set out above.

24
25 The Parties did execute and enter into that certain *Conveyance Agreement Between the*
26 *United States of America, Acting by and through the Secretary of the Navy, and the San*
27 *Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated
28 March 31, 2004 ("Conveyance Agreement").

29
30 Under the Comprehensive Environmental Response, Compensation and Liability Act
31 ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

completion of all remedial action necessary to protect human health and the environment provided that the property is suitable for transfer for the intended uses and the intended use is consistent with the protection of human health and the environment. Under this early transfer authority, the Navy intends to convey title to the portion of HPNS property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the SFRA. The ACES is defined in Section 222 below and shown in Appendix 2. The SFRA assumes responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section 211 below) for the consideration set forth in this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response action necessary to protect human health and the environment with respect to any hazardous substances remaining on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an appropriate document containing the CERCLA warranty that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken.

Article I SCOPE AND PURPOSE

Section 101. Scope and Purpose of Agreement

The principal purpose of this Agreement is to facilitate early transfer and redevelopment by providing the vehicle under which the SFRA will perform the Environmental Services in the ACES in order to satisfy the covenant requirements of the "early transfer" provisions of Section 120(h)(3)(C)(iii) of CERCLA for the consideration specified herein. This Agreement is considered a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1) and benefits both the Navy and the SFRA because it facilitates SFRA access to and control of the ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section 220 below) and immediate reuse by allowing the SFRA to cause to be performed certain environmental remediation activities while simultaneously facilitating redevelopment as defined herein. In addition, early transfer will allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved.

The Navy is conveying HPNS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G to the SFRA pursuant to the Navy's early transfer authority. The Navy and the United States Environmental Protection Agency ("EPA") have issued Records of Decision ("RODs", see Section 207) for HPS Parcels B and G selecting remedial actions for responding to releases of CERCLA hazardous substances as provided by the Federal Facility Agreement ("FFA") entered into by the Navy and the Environmental Regulatory Agencies (as defined in Section 229 below) in 1991. The Navy is legally responsible for executing the remedial actions selected in those RODs as required by CERCLA, the National Oil and Hazardous Substances Contingency Plan ("NCP"), and the FFA.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 It is anticipated that the completion of remedial action required by the RODs will satisfy the
2 covenant requirements of Section 120(h)(3)(C)(iii) of CERCLA.

3
4 Subject to the provisions of this Agreement, the Navy and SFRA hereby agree that SFRA
5 shall assume the Navy's responsibility for and shall cause to be performed Environmental
6 Services that are required to complete remedial action required by the RODs and applicable
7 Remedial Design reports within the ACES for Parcels B and G and that are necessary to comply
8 with CERCLA and the NCP, achieve Regulatory Closure, and comply with Long-Term
9 Obligations within the ACES in accordance with the Technical Specifications and Requirement
10 Statement ("TSRS") (Exhibit 9) subject to the receipt of funding from the Navy in an amount
11 not to exceed the maximum funding obligation of _____ .

12
13 The Navy and the Environmental Regulatory Agencies have entered into an FFA
14 Amendment suspending the Navy's FFA obligations to implement remedial actions required by
15 the RODs and applicable Remedial Design reports. The SFRA has agreed with the
16 Environmental Regulatory Agencies to conduct these remedial actions pursuant to an
17 Administrative Order on Consent ("AOC", see Section xx) entered into with the Environmental
18 Regulatory Agencies. The FFA Amendment provides that the Navy will resume CERCLA
19 responsibility for compliance with the FFA in the event of a Finding of Default as provided in
20 the AOC or upon a termination of this Agreement pursuant to Sections 701 and 1003
21 below.

22 The scope of this Agreement does not include additional remedial action to address
23 Uninsured Unknown Conditions (as defined in the TSRS) that may be required by
24 Amendments or Explanations of Significant Differences ("ESDs") to the RODs except to the
25 extent attributable to any negligence and misconduct of the SFRA. In the event that such
26 additional remediation is required, the Parties agree to meet and confer to discuss a mutually
27 agreeable solution.

28
29 The scope of this Agreement does not include Navy Retained Conditions ("NRC", -see
30 Section xx) or Ineligible Work (see Section xx). Nothing in this Agreement shall be construed as
31 creating a legal obligation under this Agreement (contractual or otherwise) for either the Navy or
32 SFRA to fund or perform remediation addressing either NRCs or Ineligible Work. No funds
33 provided under Section 302(a) may be used by the SFRA to fund or perform either a NRC or
34 Ineligible Work. If the SFRA remediates a NRC or Ineligible Work either voluntarily or
35 pursuant to the AOC or other enforcement order, the SFRA agrees that they will do so at their
36 own cost and expense, subject to the provisions of Section 711.

37
38 Notwithstanding any other provisions of this Agreement, the Navy is not a party to,
39 bound by, or responsible for compliance with any of the provisions of the AOC including
40 AOC provisions concerning NRCs. Nothing in this Agreement shall be construed as creating
41 a Navy legal obligation to SFRA under this Agreement (contractual or otherwise) for the
42 Navy to comply with either AOC or Amended FFA provisions regarding NRCs.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article II DEFINITIONS

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

The term "Navy's Representative" for execution purposes is the Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

Section 203. San Francisco Redevelopment Agency

The term San Francisco Redevelopment Agency or "SFRA" is the Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, HPS Development Co., LP, and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The following defines "Navy-Retained Conditions" or "NRCs" which are not considered to be within the scope of the Environmental Services covered by this Agreement. The SFRA is not responsible for conducting, investigating or remediating the following NRCs under this Agreement: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; and (iii) activity identified as the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

responsibility of the Navy in the Amended FFA.. The term "NRC" does not include Ineligible Work as defined in Section 218 below.

Section 207. CERCLA Records of Decision

The term "CERCLA Records of Decision" or "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, 2009.

Section 208. Regulatory Closure

The Term "Regulatory Closure" means Environmental Regulatory Agency approval of one or more Remedial Action Completion Reports (RACRs) throughout the ACES pursuant to procedures set forth in the AOC.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed after a RACR has been approved pursuant to the AOC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports, and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. Long-Term Obligations do not include obligations attributable to NRCs.

Section 211. Environmental Services

The term "Environmental Services" means environmental remediation activities required by this Agreement to address Known Conditions and Insured Unknown Conditions (as defined in the TSRS) and that are necessary to comply with ROD and applicable Remedial Design report requirements, obtain Regulatory Closure throughout the ACES, and comply with Long-Term Obligations as provided in the TSRS.

Section 215. Radiological Materials *[Need to discuss further]*

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components.

Section 216. Environmental Insurance Policies

The term "Environmental Insurance Policies" means the Environmental Insurance ("EI") which the SFRA or its Contractor shall bind subsequent to the execution of this Agreement by an insurance carrier that is rated (-----) in accordance with the requirements as set forth below in Section 712.e. Prior to conveyance, the Navy and the SFRA shall have reviewed and approved the terms, conditions and insurer as set forth in and identified by the Environmental Insurance Policies.

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering LBP from buildings and structures.

b. Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils.

c. Management and off-site disposal of contaminated soil or solid waste excavated or generated during the course of Redevelopment Activity within any portion of the ACES for which all appropriate Environmental Regulatory Agencies have previously approved Regulatory Closure following: (1) the installation of a cap/cover remedial action by the SFRA, or (2) issuance of an approved RACR following installation of a cap/cover remedial action by the Navy.

d. Additional remediation necessary to implement a change in land use from the land uses set forth in the 1997 Reuse Plan.

e. Management and disposal of construction and demolition debris except to the extent such debris is generated in the course of an activity required by the TSRS, such as the demolition of hardscape necessary to install a monitoring well.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1
2 f. Clean up of contaminants within existing buildings and structures, that have not
3 been released into the environment; except for removal of liquids, solids, gases, sediments,
4 and/or sludges from and including oil/water separators and other equipment and containment
5 vessels within or beneath structures to the extent the equipment and vessels were not
6 reasonably discovered by visual inspection during a pre-conveyance walk-through in which
7 both parties participated.

8
9 g. Any activity associated with disturbing or altering a cover, cap or other
10 component of an environmental remedy installed pursuant to the AOC, except to the
11 extent such disturbance or alternation is necessary to comply with the AOC as a
12 result of remedy failure.

13
14 h. Non-cleanup environmental compliance activities relating to
15 redevelopment/construction following conveyance (e.g., compliance with air quality permit
16 requirements for control of fugitive dust emissions that are not contaminated with hazardous
17 substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES")
18 stormwater discharge permit requirements regulating excavation/disturbance of soil that is not
19 contaminated with hazardous substances or petroleum).

20
21 i. Any other work or activity that is not related to: (1) achieving "Regulatory
22 Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing
23 associated "Long-term Obligations."

24
25 j. All Regulatory Enforcement Activities.

26
27 k. Cleanup that is required as a result of a violation of: (i) use restrictions by the
28 SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed
29 covenant or IC applicable to the ACES.

30
31 1. Cleanup arising from the failure of the SFRA, its successors and assigns,
32 to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA
33 RODs, AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk
34 Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

35 36 **Section 220. Reuse Plan**

37
38 The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved
39 by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such
40 Redevelopment Plan has been amended as of the date of the execution of this Agreement by the
41 following documents: (i) XXXX and (ii) XXXX, all in accordance with the California
42 Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).
43

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 221. ??

-Reserved??

Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2. , and specifically excludes IR Sites 7/18 and the radiologically-impacted area.

Section 223. Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 225. Technical Specifications and Requirement Statement

The term "Technical Specifications and Requirement Statement" or "TSRS" means the statement of work included in Appendix 9.

Section 226. Regulatory Oversight

The term "Regulatory Oversight" includes the following services provided by EPA,

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

DTSC, and RWQCB which are considered allowable costs under this Agreement.

- a. Technical review of documents or data;
- b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);
- c. Site visits other than enforcement inspections;
- d. Administration of this Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;
- e. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;
- f. Independent quality assurance/quality control samples not to exceed ten percent of the samples collected.

Section 227. Regulatory Enforcement Activities

In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities" includes:

- a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or
- b. Activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking, or preparing to take, enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.

Section 228. Grants Officer

The term "Navy's Grants Officer" means the Director of Acquisition, NAVFACENGCOM, and is the only authorized Government official who can make any modifications and obligate funds under this Agreement.

Section 229. Environmental Regulatory Agency or Agencies

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

The term "Environmental Regulatory Agency or Agencies" means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("RWQCB").

Section 230. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to the ACES.

Section 231. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and RWQCB dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

Section 232. Petroleum Corrective Action Plans *[Delete this section if all PCAP work is completed prior to transfer]*

The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective concurrent with the Effective Date and addressing petroleum releases associated with the ACES that are not otherwise addressed within the CERCLA RODs.

Section 233. Remedial Action Closeout Report

The term "Remedial Action Closeout Report" or "RACR" means (Insert exact definition from AOC).

A r t i c l e I I I **OBLIGATIONS OF THE PARTIES**

Section 301. Obligations of the SFRA

In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA assumes responsibility for performing the Environmental Services. Subject to the provisions of Sections 302 hereof, the SFRA agrees that it shall perform and complete or cause to be performed and completed the necessary Environmental Services to address Known Conditions and Insured Unknown Conditions as

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

defined and provided in the TSRS the Insured Scope of Work and Insured Conditions as defined herein n.

a. The SFRA shall complete Environmental Services for Known Conditions and Insured Unknown Conditions (as defined in the TSRS) that are necessary to: (1) comply with the RODs and applicable Remedial Design reports, (2) comply with AOC requirements, (3) achieve Regulatory Closure, and (4) comply with Long Term Obligations as provided in the TSRS. The SFRA shall conduct and bear the cost of such services addressing Known Conditions even if such costs exceed the amount of ETCA funds provided and any insurance proceeds. If the SFRA transfers a portion of the ACES to another party, SFRA shall remain responsible for performing the Environmental Services on that portion. The SFRA shall ensure that the initial cap/covers required by the CERCLA RODs shall be installed throughout the ACES before transferring its final property interest within the ACES to a third party or no later than seven (7) years after the date of execution of this Agreement by both parties, whichever shall occur first.

b. The SFRA's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the SFRA's obligations shall be limited to only that portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.b hereof. Any dispute with respect to delineating the portion of the Environmental Services performed with the use of such partial funding shall be subject to dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable progress toward performing Environmental Services.

c. In the event this Agreement terminates pursuant to Section 1003 below, the SFRA shall return all unused grant funds to the Navy.

d. The SFRA shall cause the performance of the Environmental Services in a manner that will not unreasonably delay any action that the Navy determines that it may undertake in order to address NRCs.

e. The SFRA shall indemnify the Navy pursuant to the terms of Section 711.0 hereof.

f. The SFRA shall conduct audits and shall provide performance and financial reports to the Navy as follows:

(1) In accordance with the provisions contained in 32 CFR 33.26, the SFRA is responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A133, "Audits of States, Local

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. The costs of audits made in accordance with this section are allowable costs under this Agreement.

(2) The SFRA is responsible for assuring compliance with applicable Federal requirements and that performance goals are being achieved. In accordance with 32 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

(3) In accordance with 32 CFR 33.41, the SFRA shall submit timely financial status reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

g. In the event that the SFRA is served with a complaint or written notice by an Environmental Regulatory Agency, or other third parties, that suggests that an action is necessary under Section 101 or 302 of this Agreement and for which the SFRA is not responsible, the SFRA shall provide the Navy Notice and a copy of all applicable documents as soon as possible but no later than seven (7) calendar days following such receipt.

h. The SFRA shall notify the Navy within thirty (30) calendar days of receiving actual notice of any condition at or affecting the ACES or that the SFRA discovers, that suggests that an action is necessary under Section 101 or 302 of this Agreement and for which the SFRA is not responsible. The exception to this duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such discovery. The Parties shall, within a reasonable time after such notification meet and confer regarding the scope of any initial investigation that may be necessary to ascertain whether the discovery is properly categorized as a NRC or as part of the scope of Environmental Services to be performed by the SFRA. If a mutually agreeable solution to address the circumstances is not reached within a reasonable period of time after commencement of discussions between the SFRA and the Navy, the Parties reserve the right to initiate the dispute resolution process as described in Section 1001 of this Agreement.

i. Notwithstanding the preceding Section 301.h, the SFRA shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to NRCs:

(1) **Investigation Activities.** Other than a condition subject to emergency Action, if the SFRA discovers a condition it reasonably believes is a NRC, the SFRA shall use its reasonable efforts to avoid incurring costs or obligations with respect to the condition by seeking to further ascertain the existence, nature, character

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

and extent of conditions that may constitute a NRC. Nothing in this Agreement shall be construed to authorize the SFRA to seek reimbursement from the Navy or as a Navy promise or obligation to provide such reimbursement to the SFRA for costs solely associated with the initial investigation needed to ascertain the existence, nature, character and extent of the condition. If the initial investigation demonstrates that the condition at issue is a NRC and if, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to a NRC, the SFRA may seek reimbursement from the Navy for the reasonable investigation costs, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001.

(2) **Emergency Actions.** The SFRA may take immediate action to address an imminent threat to human health or the environment. The SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001, for the reasonable response costs related to such emergency action regarding a Navy Retained Condition where notification cannot practicably be provided to the Navy before such action needed to be taken OR notification is provided to the Navy before such action and the Navy agrees to permit the SFRA to take such emergency action under terms agreed to by the Parties.

(3) **Notice.** To the extent that the SFRA takes or causes to be taken actions in accordance with Section 301.i(1) and (2), the SFRA shall notify the Navy of such action as soon as practicable but no later than fifteen (15) business days after the SFRA takes or causes to be taken any such action. If the Navy disputes an SFRA action taken under Section 301.i(1) and (2), the Navy may initiate dispute resolution procedures under Section 1001.

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any NRCs that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections pursuant to the LUC RD and CERCLA RODs, AOC, CRUP, and deeds and shall assure preparation of any applicable compliance monitoring reports and certificates associated with environmental land use restrictions on the ACES..

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one advance payment which shall be made within -- (--) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the SFRA. The Navy's

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

obligation to pay hereunder is subject to the availability of appropriated funds and this shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA, which approval shall not be unreasonably withheld.

(c) Within a reasonable time after the SFRA has provided the Navy with proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and a written request from the SFRA to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. The Navy shall comply with the procedures and terms set forth in Section 301 with respect to discovery of potential Pollution Conditions that may be NRCs.

e. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law.

Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

The Maximum Navy Funding Obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

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Article V PAYMENT SCHEDULE

Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

(1) The SFRA shall maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds from the escrow account to the SFRA and their disbursement by the SFRA to an independent third party payee.

(2) Within a reasonable period of time after receiving the advance payment from the escrow account, the SFRA shall deposit the funds with an independent third party payee . Such independent third party payee shall be responsible for making all payments to a subsequent transferee and/or environmental contractor(s), with whom the SFRA enters into an agreement to perform the Environmental Services or to supervise the performance of the Environmental Services. Funds shall be considered disbursed by the SFRA when the following has occurred:

(A). The SFRA does not retain possession of the funds;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1
2 (B). The SFRA cannot get the funds back upon demand (this does not
3 include allowable costs incurred by the SFRA for which the SFRA requests proper
4 reimbursement from the independent third party payee);
5

6 (C). The independent third party payee is an independent stakeholder
7 from the SFRA and the party or parties with whom the SFRA enters into an agreement to
8 perform the Environmental Services or supervise the performance of the Environmental Services
9 and not the agent of the SFRA;
10

11 (D). The SFRA receives something in exchange for the transfer of
12 funds to the independent third party payee, such as a contractual promise to hold the funds and
13 make payments in accordance with specified procedures.
14

15 (3) Any agreement by the SFRA with an independent third party payee must also
16 include the above provisions and satisfy the requirements of 32 CFR §33.21(c).
17

18 (4) Interest. Any interest earned on the advance payment while in
19 the escrow account pending transfer to the SFRA and any interest earned on the
20 advance payment by the SFRA prior to the disbursement of those funds by the SFRA to
21 the independent third party payee must be returned to the Navy in accordance with 32 CFR
22 §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the
23 SFRA to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are
24 considered funds to be utilized for the purposes of this Agreement.
25
26

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. The requirements and provisions described in Subsections 701.a and 701.b below shall survive such termination, but only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above:

a. SFRA requirements to maintain compliance with Regulatory Closure and any applicable Long-Term Obligations including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;

b. the SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Agreement and any additional records, book papers and documents that are otherwise required to be retained under the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1) In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph (a)(1) shall in no event apply to NRCs which are Uninsured Conditions except to the extent that the NRCs are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest:

(A) any claims incurred in responding to environmental conditions in the ACES and which are within the scope of Environmental Services; or address otherwise any "Ineligible Work" as set forth in Section 218 performed by or on behalf of the SFRA;

(B) oversight costs for any remedy implemented by the SFRA to the extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this Agreement;

(C) all claims for personal injury or property damage to the extent caused by the SFRA or its contractors in the course of performing the Environmental Services;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1
2 (D) all natural resource damage claims pursuant to 42 U.S.C. Section
3 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such
4 damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its
5 contractors or its successors in interest;

6
7 (E) all costs arising from the performance of the
8 Environmental Services which SFRA performs or causes to be performed;

9
10 (F) all costs of additional remediation required on or within the
11 ACES as a result of a change in land use from that upon which the initial remedial action
12 selection decision was based when Regulatory Closure was completed;

13
14 (G) all costs associated with the correction of any failure of any Navy-
15 selected remedy implemented by the SFRA, but only to the extent such costs are directly
16 attributable to the poor workmanship or negligence of the SFRA or its contractors in the
17 performance of said implementation;

18
19 (H) all costs arising from the correction of any failure of any remedy
20 both selected and implemented by the SFRA; and

21
22 (I) all costs arising from or associated with claims addressed in the
23 Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

24
25 (2) With regard to the ACES, the Parties agree that the SFRA has provided
26 financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C.
27 Section 9620(h)(3)(C)(ii).

28
29 (3) Except as otherwise expressly provided by this Agreement, this
30 Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA
31 may have, in the absence of this Agreement, to take legal action to require the Navy to act with
32 respect to NRCs, or to seek damages resulting from the Navy's performance or failure
33 to perform any actions with respect to NRCs. Except as otherwise expressly provided by this
34 Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any
35 right that the Navy may have, in the absence of this Agreement, to take legal action against the
36 SFRA.

37
38 (4) Nothing in this Section creates rights of any kind in any person or entity
39 other than the Navy and the SFRA.

40
41 (5) The SFRA and the Navy agree that the Environmental Services to be
42 caused to be performed by the SFRA in accordance with the terms of this Agreement does not
43 include any work relating to, nor is the SFRA responsible for indemnification of the Navy for

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

any work related to, NRCs except to the extent that the NRCs are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest.

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of environmental conditions in the ACES and within the scope of Environmental Services, for Known Conditions and Insured Unknown Conditions and;

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to NRCs; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD except to the extent such disturbance or alteration is necessary to comply with the AOC as a result of potential or actual remedy failure. In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid pursuant to the Agreement.

(D) Any personal injury or property damage to the extent that it did not occur prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the SFRA may have against the Navy.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 c. General Liability Policy Provisions: All general liability insurance which the
2 SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be
3 in such form, for such amounts, for such periods of time and with such insurers as the Navy
4 may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed.
5 All policies issued for general liability insurance required by this Agreement will provide that
6 no cancellation will be effective until at least thirty (30) days after the Navy receives written
7 notice thereof. Any such policy shall also provide a waiver of subrogation of any claims
8 against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be
9 entitled to assign to a third party any rights of action which the SFRA may have against the
10 Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general
11 liability, worker's compensation, or for any similar coverage.

12
13 d. Delivery of Policies: The SFRA will provide the Navy with a certificate of
14 insurance or statement of self insurance evidencing the insurance required for the SFRA. At
15 least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a
16 certificate of insurance evidencing each renewal policy covering the same risks.

17
18 e. Environmental Insurance Requirements. Prior to the conveyance of any portion
19 of the ACES to SFRA, SFRA shall procure environmental insurance policies approved by the
20 Navy, which approval shall not be unreasonably withheld, providing "cost cap" or "stop loss"
21 coverage for cost overruns associated with implementing the work required by the CERCLA
22 RODs and further providing pollution legal liability or similar coverage, to the extent available,
23 for Pollution Conditions not addressed by the CERCLA RODs and for third party liability claims
24 associated with Pollution Conditions.

25 26 **Section 713. Reports**

27
28 To assure that the Navy will receive from the SFRA the appropriate documentation
29 necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA
30 provide additional information concerning the environmental condition of the ACES
31 reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as
32 possible after any such request is made, if the SFRA can reasonably obtain and release such
33 information, the SFRA shall provide the Navy access to any documents containing such
34 requested information. In any event, the SFRA agrees to provide the Navy such access within
35 ten (10) business days of the Navy's information request.

36 37 **Section 714. Officials Not to Benefit**

38
39 The SFRA acknowledges that no member or delegate to the United States Congress, or
40 Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive
41 any benefit that may arise therefrom.

42 43 **Section 715. Representations**

44

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

(3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to NRCs, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

A r t i c l e I X

PROCUREMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

b. Definition. In this section, the term "base closure law" means the following:

(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1
2 (2) The Defense Base Closure and Realignment Act of 1990, as amended
3 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).
4

5 c. Applicability - Any preference given under subsection (a) shall apply only to
6 contracts entered into after the base closure law was enacted.
7
8

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article X TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement, for noncompliance of Grantee or subgrantee shall include:

a. Temporarily withholding cash payments pending correction of the deficiency by the SFRA or Sub-grantee or more severe enforcement action by the awarding agency;

b. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;

c. Wholly or partly suspending or terminating the current award for the SFRA's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.

d. Withholding further awards under this Agreement; and

e. Taking other remedies that may be legally available.

Section 1003. Termination

a. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.

b. Reserved.

c. Reserved.

d. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from any failure to make a required payment under this Agreement.

e. If this Agreement is terminated for reasons other than those set forth in Section 701 above, the SFRA shall immediately:

(1) Stop work;

(2) Place no further subcontracts or orders (referred to as subcontracts in this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

clause) for materials, services, or facilities;

(3) Terminate all subcontracts;

(4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;

(5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and

(6) Return or cause to be returned to the Navy any funds held by the SFRA or the Escrow Agent not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.

f. If this Agreement is terminated under this Section 1003, the status of the parties with respect to environmental conditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.

g. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

(2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

b. The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

**Article XI
LEGAL AUTHORITY**

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____

NAME:

TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____

Mr. Robert Griffin

Assistant Commander for Acquisition, Naval Facilities Engineering Command

Dated: _____

~~SFRA ETCA DRAFT 6/9/~~Navy Clean Draft, 25 Jun 2010

~~Collective SFRA Changes to Navy March 10 Doe~~
~~Sent for Navy Meeting~~
(HPS.ETCA.Navy Clean Draft, 25 Jun 10.doc)

EARLY TRANSFER COOPERATIVE AGREEMENT

**COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY**

AND

**THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
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HUNTERS POINT NAVAL SHIPYARD
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TABLE OF CONTENTS**

CLAUSE NUMBER	CLAUSE NAME	PAGE NUMBER
None	GENERAL PROVISIONS	5
<u>ARTICLE I</u>	<u>SCOPE AND PURPOSE</u>	7
Section 101	Performance of Environmental Services	7
Section 102	Performance Method	7
<u>ARTICLE II</u>	<u>DEFINITIONS</u>	7
Section 201	Cooperative Agreement	7
Section 202	Navy's Representative	7
Section 203	SFRA	8
Section 204	Hunters Point Navy Shipyard	8
Section 205	Administrative Order on Consent ("AOC")	8
Section 206	Navy-Retained Conditions	8
Section 207	CERCLA Record of Decision	8
Section 208	Regulatory Closure	9
Section 209	Navy and Government	9
Section 210	Long-Term Obligations	9
Section 211	Environmental Services	9
Section 212	Cost Cap Insured Conditions	9
Section 213	Additional Insured Conditions	9
Section 214	Uninsured Conditions	10
Section 215	Radiological Materials	10
Section 216	Environmental Insurance Policies	10
Section 217	(Reserved)	10

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 218	Ineligible Work	10
Section 219	Redevelopment Activity	12
Section 220	Reuse Plan	12
Section 222	Area Covered by Environmental Services	13
Section 223	Unexploded Ordnance / Munitions Explosive Concern	13
Section 224	Military Munitions	13
Section 225	Navy Obligations	13
Section 226	Regulatory Oversight	13
Section 227	Regulatory Enforcement Activities	14
Section 228	Grants Officer	14
Section 229	Environmental Regulatory Agency or Agencies	15
Section 230	Covenant to Restrict the Use of Property	15
Section 231	Amended Federal Facilities Agreement	15
<u>ARTICLE III</u>	<u>OBLIGATIONS OF THE PARTIES</u>	15
Section 301	Obligations of the SFRA	15
Section 302	Obligations of the Navy	17
<u>ARTICLE IV</u>	<u>FUNDING LIMITATION AND BUDGETING</u>	19
Section 401	Navy's Funding Limitation	19
<u>ARTICLE V</u>	<u>PAYMENT SCHEDULE</u>	19
Section 501	General	19
Section 502	Payments	19
<u>ARTICLE VI</u>	<u>PAYMENT</u>	20
Section 601	General	20
Section 602	Relation to Prompt Payment Act	20
Section 603	Direct Navy Payment of SFRA's Obligations	21
<u>ARTICLE VII</u>	<u>GENERAL PROVISIONS</u>	21
Section 701	Term of Agreement	21
Section 702	Amendment of Agreement	21
Section 703	Successors and Assigns	21
Section 704	Entire Agreement	21
Section 705	Severability	22
Section 706	Waiver of Breach	22
Section 707	Notices	22
Section 708	Conflict of Interest	23
Section 709	Access to and Retention of Records	23

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 710	Change of Circumstances	22
Section 711	Liability and Indemnity	23
Section 712	Liability and Insurance	25
Section 713	Reports	26
Section 714	Officials Not to Benefit	27
Section 715	Representations	27
Section 716	Excess Funds	27
Section 717	Conveyance of IR Sites 7/18	28
<u>ARTICLE VIII</u>	<u>APPLICABLE LAWS AND REGULATIONS</u>	28
Section 801	Applicable Law	28
Section 802	Governing Regulations	28
Section 803	Environmental Protection	28
<u>ARTICLE IX</u>	<u>PROCUREMENT</u>	29
Section 901	SFRA Contracts	29
Section 902	Preference for Local Residents	29
<u>ARTICLE X</u>	<u>TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION</u>	30
Section 1001	Dispute Resolution	30
Section 1002	Enforcement	31
Section 1003	Termination	31
Section 1004	Effects of Suspension and Termination	32
<u>ARTICLE XI</u>	<u>LEGAL AUTHORITY</u>	33
Section 1101	Legal Authority	33
None	<u>SIGNATURE AND WITNESS</u>	33

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

APPENDICES

Appendix 1	Map of the Hunters Point Naval Shipyard
Appendix 2	Map of the ACES
Appendix 3	Known Conditions
Appendix 4	Environmental Insurance Polieies <u>Polices</u>
Appendix 5	RESERVED
Appendix 6	RESERVED
Appendix 7	RESERVED
Appendix 8	RESERVED
Appendix 9	Technical Specifications and Requirement Statement ("TSRS")
Appendix 10	Administrative Order on Consent ("AOC")
Appendix 11	Federal Facilities Agreement, as amended
Appendix 12	Escrow Agreement
Appendix 13	<i>Agreement to Implement the <u>March 31, 2004</u> Conveyance Agreement between the United States of America and the San Francisco Redevelopment Agency for the conveyance of Hunters Point Naval Shipyard with Regard to IR Sites 7/18 and the Radiologically-impacted Area around Building 140 dated _____. Delete App 13. Legally enforceable agreement and escrow instructions to insure that Agency has obligation to accept title when conditions for transfer are met. These conditions include <u>RACR</u>, FOST acceptable to DTSC, EPA, and RWQB. Draft of escrow instructions to be provided. FFA provisions with respect to IR 7/18 need to be drafted. Will IR 7/18 be excluded from the AOC terms? If so, what if any requirements will be imposed by EPA with respect to this parcel?</i>

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
A N D
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

1 **THIS EARLY TRANSFER COOPERATIVE AGREEMENT** ("Agreement") is
2 made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval
3 Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT**
4 **AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment
5 authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of
6 Defense and also a local public authority legally empowered to enter into this Agreement.
7 Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party"
8 and collectively as the "Parties."

9
10 **GENERAL PROVISIONS**

11
12 The Federal Government, for and on behalf of the citizens of the United States of
13 America, acts as the steward of certain real property on which it operates and maintains
14 military facilities necessary for the defense of the United States of America. Certain military
15 facilities are no longer required for that mission, and, in accordance with various base closure
16 statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real
17 and personal property at those facilities. The Navy is authorized to dispose of real and personal
18 property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local
19 reuse organization approved by the City, in accordance with Section 2824 (a) of the National
20 Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section
21 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-
22 160). The SFRA is a local reuse organization approved by the City of San Francisco to accept
23 conveyance of HPNS property in accordance with the authorities set out above.

24
25 The Parties did execute and enter into that certain *Conveyance Agreement Between the*
26 *United States of America, Acting by and through the Secretary of the Navy, and the San*
27 *Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated
28 March 31, 2004 ("Conveyance Agreement").

29
30 Under the Comprehensive Environmental Response, Compensation and Liability Act
31 ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

completion of all remedial action necessary to protect human health and the environment provided that the property is suitable for transfer for the intended uses and the intended use is consistent with the protection of human health and the environment. Under this early transfer authority, the Navy intends to convey title to ~~among other property,~~ the portion of HPNS property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the SFRA. The ACES is defined in Section 222 below and shown in Appendix 2. The SFRA assumes responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section 211 below) for the consideration set forth in this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response action necessary to protect human health and the environment with respect to any hazardous ~~substances~~substances remaining on the ACES on the date of ~~the~~ transfer has been taken, the Navy will deliver to the SFRA an appropriate document containing the CERCLA warranty that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken.

Article I SCOPE AND PURPOSE

Section 101. Scope and Purpose of Agreement

The principal purpose of this Agreement is to facilitate early transfer and redevelopment by providing the ~~contractual~~ vehicle under which the SFRA will perform the Environmental Services in the ACES ~~and be compensated for such performance.~~

~~It is in the public interest and will be beneficial to the Navy and the SFRA for the SFRA to cause to be performed the Environmental Services at the ACES. As set forth in the Amended Federal Facilities Agreement ("Amended FFA"), as defined in Section 231 below, the Navy will resume CERCLA responsibility for compliance with the Amended FFA in the event of a Finding of Default as provided in the Administrative Order on Consent ("AOC") as hereinafter defined, or upon a failure of the Navy to continue its funding obligations, as described in Article IV, or upon a termination of this Agreement pursuant to Sections 701 and 1003 below. Notwithstanding any other provisions of this Agreement, the Navy is not a party to, bound by, or responsible for compliance with any of the provisions of the AOC. The Navy's obligations pursuant to the Amended FFA are not affected by this Agreement with respect to Navy Retained Conditions, as defined in Section 206. This Agreement benefits in order to satisfy the covenant requirements of the "early transfer" provisions of Section 120(h)(3)(C)(iii) of CERCLA for the consideration specified herein. This Agreement is considered a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1) and benefits both the Navy and the SFRA because it facilitates early transfer SFRA access to and control of the ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section 220 below) and immediate reuse by allowing the SFRA to cause to be performed certain environmental remediation activities and while simultaneously facilitates facilitating redevelopment as defined herein. This~~

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

~~Agreement, executed as part of an early transfer, facilitates SFRA access and control to the ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section 220 below). In addition, early transfer will allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved. This Agreement is a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1).~~

~~In accordance with 42 U.S.C. 9620 (h)(3)(C)(iii), after all response action necessary to protect human health and the environment with respect to any hazardous substances remaining on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an appropriate document containing the CERCLA warranty that "all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken ..."~~

~~The Navy and the SFRA have entered into this Agreement for the purpose of establishing the terms and conditions necessary to obtain Regulatory Closure for the ACES and ensure the execution of Long-Term Obligations associated with Regulatory Closure. The Navy agrees to provide funds to the SFRA in accordance with and subject to the provisions of this Agreement and to undertake and complete its obligations under Section 302 hereof. The SFRA agrees to perform the Environmental Services in accordance with and subject to the provisions of this Agreement.~~

Article I

SCOPE AND PURPOSE

~~Section 101. Scope of Agreement~~

The Navy is conveying HPNS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G to the SFRA pursuant to the Navy's early transfer authority. The Navy and the United States Environmental Protection Agency ("EPA") have issued Records of Decision ("RODs", see Section 207) for HPS Parcels B and G selecting remedial actions for responding to releases of CERCLA hazardous substances as provided by the Federal Facility Agreement ("FFA") entered into by the Navy and the Environmental Regulatory Agencies (as defined in Section 229 below) in 1991. The Navy is legally responsible for executing the remedial actions selected in those RODs as required by CERCLA, the National Oil and Hazardous Substances Contingency Plan ("NCP"), and the FFA. It is anticipated that the completion of remedial action required by the RODs will satisfy the covenant requirements of Section 120(h)(3)(C)(iii) of CERCLA.

~~The SFRA agrees to~~ Subject to the provisions of this Agreement, the Navy and SFRA hereby agree that SFRA shall assume the Navy's responsibility to perform the Environmental Services in accordance with and subject to the provisions of this Agreement's responsibility for and shall cause to be performed Environmental Services that are required to complete remedial action required by the RODs and applicable Remedial Design reports within the ACES for Parcels B and G and that are necessary to comply with CERCLA and the NCP, achieve Regulatory Closure, and comply with Long-Term Obligations within the ACES in accordance with the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 Technical Specifications and Requirement Statement (“TSRS”) (Exhibit 9) subject to the receipt
2 of funding from the Navy ~~pursuant to Section 302(a), and Articles IV, V and VI~~ The SFRA is
3 ~~does not assuming assume by this Agreement any obligation or liability not expressly assumed~~
4 ~~identified as such by the SFRA in this Agreement~~ in an amount not to exceed the maximum
5 funding obligation of _____.
6

7 The Navy and the Environmental Regulatory Agencies have entered into an FFA
8 Amendment suspending the Navy’s FFA obligations to implement remedial actions required by
9 the RODs and applicable Remedial Design reports. The SFRA has agreed with the Environmental
10 Regulatory Agencies to conduct these remedial actions pursuant to an Administrative Order on
11 Consent (“AOC”, see Section xx) entered into with the Environmental Regulatory Agencies. The
12 FFA Amendment provides that the Navy will resume CERCLA responsibility for compliance with
13 the FFA in the event of a Finding of Default as provided in the AOC or upon a termination of
14 this Agreement pursuant to Sections 701 and 1003 below.

15 The scope of this Agreement does not include additional remedial action to address
16 Uninsured Unknown Conditions (as defined in the TSRS) that may be required by Amendments
17 or Explanations of Significant Differences (“ESDs”) to the RODs except to the extent
18 attributable to any negligence and misconduct of the SFRA. In the event that such additional
19 remediation is required, the Parties agree to meet and confer to discuss a mutually agreeable
20 solution.

21 22 ~~Section 102.—Performance Method~~

23 The scope of this Agreement does not include Navy Retained Conditions (“NRC”, -see
24 Section xx) or Ineligible Work (see Section xx). Nothing in this Agreement shall be construed as
25 creating a legal obligation under this Agreement (contractual or otherwise) for either the Navy or
26 SFRA to fund or perform remediation addressing either NRCs or Ineligible Work. No funds
27 provided under Section 302(a) may be used by the SFRA to fund or perform either a NRC or
28 Ineligible Work. If the SFRA remediates a NRC or Ineligible Work either voluntarily or pursuant
29 to the AOC or other enforcement order, the SFRA agrees that they will do so at their own cost and
30 expense, subject to the provisions of Section 711.

31
32 ~~This Agreement, the CERCLA RODs and associated Remedial Design reports, and AOC~~
33 ~~together establish the process for the SFRA's performance of the Environmental Services. By the~~
34 ~~execution of this Agreement, the Navy concurs with the Regulatory Closure process set forth in~~
35 ~~this Agreement and the CERCLA RODs and associated Remedial Design reports, and the AOC.~~

36 Notwithstanding any other provisions of this Agreement, the Navy is not a party to,
37 bound by, or responsible for compliance with any of the provisions of the AOC including AOC
38 provisions concerning NRCs. Nothing in this Agreement shall be construed as creating a Navy
39 legal obligation to SFRA under this Agreement (contractual or otherwise) for the Navy to
40 comply with either AOC or Amended FFA provisions regarding NRCs.

41 42 A r t i c l e I I 43 DEFINITIONS

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

The term "Navy's Representative" ~~means the~~ for execution purposes is the Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

Section 203. ~~SFRA~~ San Francisco Redevelopment Agency

The term "~~SFRA~~" ~~means the~~ San Francisco Redevelopment Agency or "SFRA" is the ~~a~~ Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent (~~"AOC"~~)

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, HPS Development Co., LP, and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The ~~term~~ following defines "Navy-Retained Conditions" ~~means~~ or "NRCs" which are not considered to be within the scope of the Environmental Services covered by this Agreement. The SFRA is not responsible for conducting, investigating or remediating the following NRCs under this Agreement: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; and (iii) ~~any~~ activity identified as the responsibility of the Navy in the Amended FFA; ~~and (iv) Uninsured Conditions.~~ The term

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

~~Navy Retained Conditions~~ The term "~~NRC~~" "NRC" does not include Ineligible Work as defined in Section 218 below.

Section 207. CERCLA ~~RODs~~ Records of Decision

The term "CERCLA Records of Decision" or "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, 2009.

Section 208. Regulatory Closure

~~The Term "Regulatory Closure" as applied to the entire ACES, means issuance of a Certification of Completion of Remedial Action or of an Interim certification of Completion of Remedial Action for areas encompassing each Cost Cap Insured condition and Additional Insured Condition within the ACES. As applied to a portion of the ACES or to a particular Pollution Condition, the term means the issuance of a Certification of Completion of Remedial Action or of an Interim Certification of Completion of Remedial Action for that area encompassing that portion of the ACES or that Pollution Condition.~~

The Term "Regulatory Closure" means Environmental Regulatory Agency approval of one or more Remedial Action Completion Reports (RACRs) throughout the ACES pursuant to procedures set forth in the AOC.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed after a RACR has been approved pursuant to the AOC ~~to address Cap Insured Conditions and Additional Insured Conditions throughout the ACES~~ including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports, and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. Long-Term Obligations do not include obligations attributable to NRCs.

Section 211. Environmental Services

The term "Environmental Services" means environmental remediation activities required ~~funded~~ by this Agreement ~~solely with respect and limited to the Cost Cap Insured Conditions and Additional Insured Conditions necessary to~~ to address Known Conditions and Insured Unknown

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Conditions (as defined in the TSRS) and that are necessary to comply with ROD and applicable Remedial Design report requirements, obtain Regulatory Closure throughout the ACES, and ~~associated~~ comply with Long-Term Obligations ~~except to the extent that such Long-Term Obligations are attributable to Navy Retained Conditions. The term "Environmental Services" does not include the performance of Navy Retained Conditions; Ineligible Work; any work associated with implementing amendments of, or Explanations of Significant Differences (ESDs) with, the CERCLA RODs; any work associated with the migration of a Pollution Condition from outside the ACES onto, into, or under the ACES; or any work associated with the migration of a Pollution Condition from the ACES onto, into or under Parcel F, except the extent such migration is caused or contributed to by the negligence of SFRA or any party acting on its behalf.~~ as provided in the TSRS.

Section 212.—Cost Cap Insured Conditions

~~The term "Cost Cap Insured Conditions" means Pollution Conditions that are within the coverage grant and not excluded of the cost overrun insurance component of the Environmental Insurance Policies, and includes such Pollution Conditions even after the expiration of the term of, or exhaustion of the limits of, the cost overrun insurance component of the Environmental Insurance Policies, except to the extent such Pollution Condition is a Navy Retained Condition. [Note: If Navy retained, it would not be in the coverage grant.]~~

Section 213.—Additional Insured Conditions

~~The term "Additional Insured Conditions" means those Pollution Conditions in the ACES that are not Cost Cap Insured Conditions but are otherwise within the coverage grant and not excluded of the Environmental Insurance Policies. This term also includes any Pollution Condition that otherwise would have been an Additional Insured Condition but for which coverage was denied by the insurance provider solely due to the failure of the SFRA or named insured to comply with any requirements as set forth in the Environmental Insurance Policies, but only to the extent of specific costs that would have otherwise been funded by the Environmental Insurance Policies but for such failure of the SFRA or the named insured.~~

Section 214.—Uninsured Condition(s)

~~The term "Uninsured Condition(s)" means those Pollution Conditions that are not "Cost Cap Insured Conditions" or "Additional Insured Conditions".~~

Section 215. Radiological Materials *[Need to discuss further]*

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides, including defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components ~~that do not require special handling or special treatment as a result of the materials containing radionuclides, or are otherwise subject to regulatory standards that would be applied in the absence of such radiological materials.~~

Section 216. Environmental Insurance Policies

The term "Environmental Insurance Policies" means the ~~environmental insurance which the SFRA shall procure~~ Environmental Insurance ("EI") which the SFRA or its Contractor shall bind subsequent to the execution of this Agreement by an insurance carrier that is rated (-----) in accordance with the requirements as set forth below in Section 712.e of this Agreement. ~~Section 217. Pollution Condition means ... [Insert the exact definition from Prior to conveyance, the Navy and the SFRA shall have reviewed and approved the terms, conditions and insurer as set forth in and identified by~~ the Environmental Insurance Policies.

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any ~~one~~ or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering ~~of~~ LBP from buildings and structures.

b. Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils.

c. Management and off-site disposal of contaminated soil or solid waste excavated or generated during the course of Redevelopment Activity within any portion of the ACES for which all appropriate Environmental Regulatory Agencies have previously approved Regulatory Closure following: (1) the installation of a cap/cover remedial action by the SFRA, or (2) issuance of an approved RACR following installation of a cap/cover remedial action by the Navy.

d. Additional remediation necessary to implement a change in land use from the land uses set forth in the 1997 Reuse Plan.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

e. Management and disposal of construction and demolition debris, except to the extent such debris is generated in the course of an activity required by the ~~AOC~~TSRS, such as the demolition of hardscape necessary to install a monitoring well.

f. ~~e.~~ Clean up of contaminants within existing buildings and structures, that have not been released into the environment; except for removal of liquids, solids, gases, sediments, and/or sludges from and including oil/water separators and other equipment and containment vessels within or beneath structures to the extent the equipment and vessels were not reasonably discovered by visual inspection during a pre-conveyance walk-through in which both parties participated.

g. ~~f.~~ Any activity associated with disturbing or altering a cover, cap or other component of an environmental remedy installed pursuant to the AOC, except to the extent such disturbance or ~~alteration~~alternation is necessary to comply with the AOC as a result of ~~actual or potential remedy failure, or as a result of addressing Pollution Conditions other than those addressed by the cover, cap or other environmental remedy~~remedy failure.

h. ~~g.~~ Non-cleanup environmental compliance activities relating to redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).

i. ~~h.~~ Any other work or activity that is not related to: (1) achieving "Regulatory Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing associated "Long-term Obligations."

j. ~~i.~~ All Regulatory Enforcement Activities.

k. ~~j.~~ Cleanup that is required as a result of a violation of: (i) use restrictions by the SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed covenant or IC applicable to the ACES.

~~k.~~ l. Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA RODs, AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

~~Section 219.~~ Parcel F

~~Parcel F shall mean the submerged area more particularly described in Exhibit .~~

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 220. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such Redevelopment Plan has been amended as of the date of the execution of this Agreement by the following documents: (i) XXXX and (ii) XXXX, all in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

Section 221. ~~??~~

~~Reserved??~~

Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2. , and specifically excludes IR Sites 7/18 and the radiologically-impacted area.

Section 223. Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 225. Technical Specifications and Requirement Statement ~~or TSRS~~

The term "Technical Specifications and Requirement Statement" or "TSRS" means the statement of work included in Appendix 9.

Section 226. Regulatory Oversight

The term "Regulatory Oversight" includes the following services provided by EPA, DTSC, and RWQCB ~~the United States Environmental Protection Agency, the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("Water Board")~~ which are considered allowable costs under this Agreement.

- a. Technical review of documents or data;
- b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);
- c. Site visits other than enforcement inspections;
- d. ~~Technical Review Committee (TRC) or appropriate community outreach program if applicable;~~ Administration of this Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;
- e. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;
- f. Independent quality assurance/quality control samples not to exceed ten percent of the samples collected.

Section 227. Regulatory Enforcement Activities

In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities" includes:

- a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or
- b. Activities associated with ~~USEPA~~EPA, DTSC, RWQCB, ~~the Water Board,~~ ~~CDPH~~, or other independent State or Federal regulatory agency with jurisdiction over the ACES

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 taking, or preparing to take, enforcement actions against the SFRA, or its contractors or
2 agents, for alleged violations of laws, regulations, or enforceable agreements
3 associated with environmental protection, public health or safety.

4 5 **Section 228.** Grants Officer

6
7 The term "Navy's Grants Officer" means the Director of Acquisition,
8 NAVFACENGCOM, and is the only authorized Government official who can make any
9 modifications and obligate funds under this Agreement.

10 11 **Section 229.** Environmental Regulatory Agency or Agencies

12
13 The term "Environmental Regulatory Agency or Agencies" means the United States
14 Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances
15 Control ("DTSC"), and the San Francisco Bay Water Quality Control Board (~~"Water Board~~
16 "RWQCB").

17 18 **Section 230.** Covenant to Restrict the Use of Property

19
20 The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain
21 document required by the CERCLA RODs that identifies the environmental covenants and
22 restrictions that shall apply to the ACES.

23 24 **Section 231.** Amended Federal Facilities Agreement

25
26 The term "Amended Federal Facilities Agreement" or "Amended FFA" means that
27 certain document executed by the Navy, USEPA, DTSC, and ~~the RWQCB~~ ~~Water Board~~
28 dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS
29 dated January 22, 1992 ("FFA"), amended such FFA.

30 31 **Section 232.** Petroleum Corrective Action Plans *[Delete this section if all PCAP work is* 32 *completed prior to transfer]*

33
34 The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum
35 Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective
36 concurrent with the Effective Date and addressing petroleum releases associated with the ACES
37 that are not otherwise addressed within the CERCLA RODs.

38 39 **Section 233.- Remedial Action Closeout Report** ~~or RACR~~

40
41 The term "Remedial Action Closeout Report" or "RACR" means ~~INSERT~~ (Insert exact
42 definition from AOC ~~(to be written))~~).

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article III OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the SFRA

In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA assumes responsibility for performing the Environmental Services. Subject to the provisions of ~~Section~~Sections 302 hereof, the SFRA agrees that it shall perform and complete or cause to be performed and completed the necessary Environmental Services to address Known Conditions and Insured Unknown Conditions as defined and provided in the ~~TSRS~~ the TSRS the Insured Scope of Work and Insured Conditions as defined herein n. ~~The Environmental Services shall be conducted in a manner generally consistent with the TSRS, except to the extent SFRA reasonably determines it is necessary to vary from the TSRS in order to comply with the CERCLA RODS or a directive issued by an Environmental Regulatory Agency. [Note: Need to see form and content of TSRS]~~

a. The SFRA shall complete Environmental Services for Known Conditions and Insured Unknown Conditions (as defined in the TSRS) that are necessary to: (1) comply with the RODs and applicable Remedial Design reports, (2) comply with AOC requirements, (3) achieve Regulatory Closure, and (4) comply with Long Term Obligations as provided in the TSRS. The SFRA shall conduct and bear the cost of such services addressing Known Conditions even if such costs exceed the amount of ETCA funds provided and any insurance proceeds. If the SFRA transfers a portion of the ACES to another party, SFRA shall remain responsible for performing the Environmental Services on that portion. The SFRA shall ensure that the initial ~~caps~~cap/covers required by the CERCLA RODs shall be installed throughout the ACES before transferring its final property interest within the ACES to a third party or no later than seven (7) years after the date of execution of this Agreement by both parties, whichever shall occur first.

b. The SFRA's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the SFRA's obligations shall be limited to only that portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.b hereof. Any dispute with respect to delineating the portion of the Environmental Services performed with the use of such partial funding shall be subject to dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable progress toward performing Environmental Services.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

c. ~~The SFRA shall conduct audits and shall provide performance and financial reports to the Navy in accordance with Section 301.f. below~~In the event this Agreement terminates pursuant to Section 1003 below, the SFRA shall return all unused grant funds to the Navy.

d. The SFRA shall cause the performance of the Environmental Services in a manner that will not unreasonably delay any action that the Navy determines that it may undertake in order to address ~~Navy Retained Conditions~~NRCs.

e. The SFRA shall indemnify the Navy pursuant to the terms of Section ~~744~~711.0 hereof.

f. ~~Non-Federal Audits, Performance Reporting & Financial Reports.~~The SFRA shall conduct audits and shall provide performance and financial reports to the Navy as follows:

(1) ~~The~~In accordance with the provisions contained in 32 CFR 33.26, the SFRA is responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. The costs of audits made in accordance with this section are allowable costs under this Agreement.

(2) The SFRA is responsible for assuring compliance with applicable Federal requirements and that performance goals are being achieved. In accordance with 32 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be submitted to the Navy on the same schedule ~~basis~~ as the SFRA, its developer, or its contractors submit such information to the insurance provider.

(3) In accordance with 32 CFR 33.41, the SFRA shall submit timely financial status reports to the Navy. All reports shall be submitted to the Navy on the same schedule ~~basis~~ as the SFRA, its developer, or its contractors submit such information to the insurance provider.

g. ~~The SFRA shall provide the Navy notice within thirty (30) calendar days of receiving notice by~~In the event that the SFRA is served with a complaint or written notice by an Environmental Regulatory ~~Agencies~~Agency, or other third parties, ~~of the existence of any Pollution Condition at the ACES~~ that suggests that an action is necessary under Section 101 or 302 of this Agreement and for which the SFRA is not responsible ~~under this Agreement. If the SFRA is served with a complaint or written notice by an Environmental Regulatory Agency, the SFRA shall provide the Navy with~~Notice and a copy of ~~such document~~all applicable documents as soon as possible but no later than seven (7) calendar days following ~~the service of such receipt document. If the SFRA discovers a potential Pollution Condition in the ACES that the SFRA reasonably believes is a Navy Retained Condition, the SFRA shall make an initial determination~~

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

~~whether such potential Pollution Condition is in fact a Navy Retained Condition before incurring such costs or obligations. If, despite using commercially reasonable efforts to avoid incurring such costs to take action it reasonably deems necessary and before it is able to meet and confer with the Navy in accordance with Section 302(h) below, the SFRA incurs uninsured costs or obligations with respect to a Navy Retained Condition, the SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401, hereof, and the dispute resolution provisions of Section 1001 hereof. Nothing in this Agreement shall be construed as a Navy promise or obligation to provide such reimbursement, provided, however, subject to its funding limitations and the Anti-Deficiency Act, the Navy shall use reasonable efforts to seek to obtain funds to reimburse the SFRA for the SFRA's reasonable costs incurred under this Section 301.g, if SFRA seeks reimbursement~~such receipt.

h. ~~Within~~The SFRA shall notify the Navy within thirty (30) calendar days of ~~either making a determination pursuant to 301.g or otherwise receiving actual notice that there is a Navy Retained Condition at or affecting the ACES, the SFRA shall notify the Navy of such condition~~receiving actual notice of any condition at or affecting the ACES or that the SFRA discovers, that suggests that an action is necessary under Section 101 or 302 of this Agreement and for which the SFRA is not responsible. The exception to this duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such discovery. The Parties shall, within a reasonable time ~~under the circumstances, after such notification~~ meet and confer ~~in consultation with the appropriate Environmental Regulatory Agency or Agencies, regarding the scope of any appropriate coordination that might be required in order to address the circumstances. As part of such meet and confer obligation, the Parties shall in good faith endeavor to agree as to whether such condition is within the scope of the~~initial investigation that may be necessary to ascertain whether the discovery is properly categorized as a NRC or as part of the scope of Environmental Services ~~or is a Navy Retained Condition, and if a Navy Retained Condition, whether the Navy or the SFRA will perform the work to address such Navy Retained Condition, and if to be performed by the SFRA, identify the Navy's funding source and schedule of payment. If the Parties cannot agree whether a Pollution Condition constitutes a Navy Retained Condition, or disagree about the action or funding required in response to any such condition, the matter may be submitted to a dispute resolution under Section 1001.~~If a mutually agreeable solution to address the circumstances is not reached within a reasonable period of time after commencement of discussions between the SFRA and the Navy, the Parties reserve the right to initiate the dispute resolution process as described in Section 1001 of this Agreement.

i. Notwithstanding the preceding Section 301.h, the SFRA shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to NRCs:

(1) Investigation Activities. Other than a condition subject to emergency Action, if the SFRA discovers a condition it reasonably believes is a NRC, the SFRA shall use its reasonable efforts to avoid incurring costs or obligations with

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

respect to the condition by seeking to further ascertain the existence, nature, character and extent of conditions that may constitute a NRC. Nothing in this Agreement shall be construed to authorize the SFRA to seek reimbursement from the Navy or as a Navy promise or obligation to provide such reimbursement to the SFRA for costs solely associated with the initial investigation needed to ascertain the existence, nature, character and extent of the condition. If the initial investigation demonstrates that the condition at issue is a NRC and if, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to a NRC, the SFRA may seek reimbursement from the Navy for the reasonable investigation costs, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001.

(2) **Emergency Actions.** The SFRA may take immediate action to address an imminent threat to human health or the environment. The SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001, for the reasonable response costs related to such emergency action regarding a Navy Retained Condition where notification cannot practicably be provided to the Navy before such action needed to be taken OR notification is provided to the Navy before such action and the Navy agrees to permit the SFRA to take such emergency action under terms agreed to by the Parties.

~~i. Further language to allow the SFRA to react to mundane NRCs in an emergency or expedited context.~~

(3) **Notice.** To the extent that the SFRA takes or causes to be taken actions in accordance with Section 301.i(1) and (2), the SFRA shall notify the Navy of such action as soon as practicable but no later than fifteen (15) business days after the SFRA takes or causes to be taken any such action. If the Navy disputes an SFRA action taken under Section 301.i(1) and (2), the Navy may initiate dispute resolution procedures under Section 1001.

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any ~~Navy Retained Conditions~~ NRCs that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections pursuant to the LUC RD and CERCLA RODs, ~~LUC RD~~, AOC, CRUP, and deeds and ~~prepare~~ shall assure preparation of any applicable compliance monitoring reports and certificates associated with environmental ~~restriction~~ land use restrictions on the ~~use of the~~ ACES.

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 advance payment which shall be made within -- (--) days after recordation of the deed conveying
2 title to the Early Transfer Property from the Navy to the SFRA. The Navy's obligation to pay
3 hereunder is subject to the availability of appropriated funds and this shall not be interpreted to
4 require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C.
5 1341).

6
7 b. Notwithstanding the provisions of Section 302.a. above, prior to payment being
8 made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set
9 forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved
10 by the Navy and the SFRA, which approval shall not be unreasonably withheld.

11
12 ~~(c.)~~ Within a reasonable time after the SFRA has provided the Navy with proper
13 documentation establishing that Regulatory Closure has been obtained for the ACES, or
14 portions of the ~~ACEs~~ ACES, as set forth in the AOC, and a written request from the SFRA to issue
15 the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall
16 issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii).
17 The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA
18 warranty to be recorded.

19
20 d. ~~d.~~ The Navy shall comply with the procedures and terms set forth in Section
21 301 with respect to discovery of potential Pollution Conditions that may be ~~Navy Retained~~
22 ~~Conditions~~ NRCs.

23
24 ~~Except to the extent any portion of Ineligible Work is a Navy Retained Condition, the~~
25 ~~Navy shall have no responsibility for Ineligible Work, and no funds provided under Section 302(a)~~
26 ~~may be used by the SFRA to fund Ineligible Work; provided, however, that nothing in this~~
27 ~~Agreement shall prohibit the SFRA, within its sole discretion, from performing Ineligible Work at~~
28 ~~the SFRA's own cost and expense.~~

29
30 e. ~~e.~~ Any Navy liability for the death of or injury to any person, or the loss of
31 or damage to any property, caused by Navy use of the ACES shall be determined in accordance
32 with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as
33 amended), or as otherwise provided by law. ~~The Navy shall comply with the procedures and terms~~
34 ~~set forth in Section 301 with respect to discovery of potential Pollution conditions that may be~~
35 ~~NRCs.~~

36
37 ~~f.~~ The Navy shall cause its performance of any activity with respect to Navy Retained
38 Conditions or any other Pollution Condition for which the Navy has responsibility at or affecting
39 the ACES to be conducted in a manner that will not unreasonably delay or interfere with SFRA's
40 performance of the Environmental Services.

Article IV FUNDING LIMITATION AND BUDGETING

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 401. Navy's Funding Limitation

The Maximum Navy Funding Obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation.

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

INSERT THE UIC AND LINE OF ACCOUNTING HERE

A r t i c l e V **PAYMENT SCHEDULE**

Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 (1)- The SFRA shall maintain or demonstrate the willingness and ability to
2 maintain procedures to minimize the time elapsing between the transfer of the funds from the
3 escrow account to the SFRA and their disbursement by the SFRA to an independent third party
4 payee.

5
6 (2)- Within a reasonable period of time after receiving the advance payment from
7 the escrow account, the SFRA shall deposit the funds with an independent third party payee. Such
8 independent third party payee shall be responsible for making all payments to a subsequent
9 transferee and/or environmental contractor(s), with whom the SFRA enters into an agreement to
10 perform the Environmental Services or to supervise the performance of the Environmental
11 Services. Funds shall be considered disbursed by the SFRA when the following has occurred:

12
13 (A). ~~(A)~~ The SFRA does not retain possession of the funds;

14
15 (B). ~~(B)~~ The SFRA cannot get the funds back upon demand (this does
16 not include allowable costs incurred by the SFRA for which the SFRA requests proper
17 reimbursement from the independent third party payee);

18
19 (C). ~~(C)~~ The independent third party payee is an independent
20 stakeholder from the SFRA and the party or parties with whom the SFRA enters into an agreement
21 to perform the Environmental Services or supervise the performance of the Environmental
22 Services and not the agent of the SFRA;

23
24 (D). ~~(D)~~ The SFRA receives something in exchange for the transfer
25 of funds to the independent third party payee, such as a contractual promise to hold the funds and
26 make payments in accordance with specified procedures.

27
28 (3)- Any agreement by the SFRA with an independent third party payee must also
29 include the above provisions and satisfy the requirements of 32 CFR §33.21(c).

30
31 (4)- Interest. Any interest earned on the advance payment while in the
32 escrow account pending transfer to the SFRA and any interest earned on the advance
33 payment by the SFRA prior to the disbursement of those funds by the SFRA to the
34 independent third party payee must be returned to the Navy in accordance with 32 CFR
35 §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the SFRA
36 to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are considered
37 funds to be utilized for the purposes of this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT

Article VI
PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. ~~No~~ Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

A r t i c l e V I I
GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. The requirements and provisions described in Subsections 701.a and 701.b below shall survive such termination, but only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above:

a. SFRA requirements to maintain compliance with Regulatory Closure and any applicable Long-Term Obligations including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;

b. the SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT

With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Agreement and any additional records, book papers and documents that are otherwise required to be retained under the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1)-In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph ~~(1)(a)(1)~~ shall in no event apply to ~~Navy-Retained-Conditions-or~~ NRCs which are Uninsured Conditions except to the extent that the NRCs are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest:

(A) any claims incurred in responding to ~~Pollution~~ environmental conditions in the ACES and which are within the scope of Environmental Services; or address otherwise any "Ineligible Work" as set forth in Section 218 performed by or on behalf of the SFRA;

(B) oversight costs for any remedy implemented by the SFRA to the extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this Agreement;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(C) all claims for personal injury or property damage to the extent caused by the SFRA or its contractors in the course of performing the Environmental Services;

(D) all natural resource damage claims pursuant to 42 U.S.C. Section 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its contractors or its successors in interest;

(E) all costs arising from the performance of the Environmental Services which SFRA performs or causes to be performed;

(F) all costs of additional remediation required on or within the ACES as a result of a change in land use from that upon which the initial remedial action selection decision was based when Regulatory Closure was completed;

(G) all costs associated with the correction of any failure of any Navy-selected remedy implemented by the SFRA, but only to the extent such costs are directly attributable to the poor workmanship or negligence of the SFRA or its contractors in the performance of said implementation;

(H) all costs arising from the correction of any failure of any remedy both selected and implemented by the SFRA; and

(I) all costs arising from or associated with claims addressed in the Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

(2) With regard to the ACES, the Parties agree that the SFRA has provided financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C. Section 9620(h)(3)(C)(ii).

(3) Except as otherwise expressly provided by this Agreement, this Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA may have, in the absence of this Agreement, to take legal action to require the Navy to act with respect ~~to Navy Retained Conditions NRCs~~ to NRCs, or to seek damages resulting from the Navy's performance or failure to perform any actions with respect ~~to Navy Retained Conditions NRCs~~ to NRCs. Except as otherwise expressly provided by this Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any right that the Navy may have, in the absence of this Agreement, to take legal action against the SFRA.

(4) Nothing in this Section creates rights of any kind in any person or entity other than the Navy and the SFRA.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(5) The SFRA and the Navy agree that the Environmental Services to be caused to be performed by the SFRA in accordance with the terms of this Agreement does not include any work relating to, nor is the SFRA responsible for indemnification of the Navy for any work related to, NRCs except to the extent that the NRCs are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest.
~~Navy-Retained Conditions.~~

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of ~~Cost Cap Insured Conditions and Additional Insured Conditions environmental within the scope of Environmental Services and;~~ environmental conditions in the ACES and within the scope of Environmental Services, for Known Conditions and Insured Unknown Conditions; and;

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to ~~Navy-Retained Conditions NRCs~~ NRCs; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD; except to the extent such disturbance or alteration is necessary to comply with the AOC as a result of potential or actual remedy failure, ~~or as a result of addressing Pollution Conditions other than those addressed by the cover, cap or other environmental remedy.~~ In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid pursuant to ~~this~~ the Agreement.

(D) Any personal injury or property damage to the extent that it did not occur prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the SFRA may have against the Navy.

c. General Liability Policy Provisions: All general liability insurance which the SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

d. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

~~e.~~ e. Environmental Insurance Requirements. Prior to the conveyance of any portion of the ACES to SFRA, SFRA shall procure environmental insurance policies approved by the Navy, which approval shall not be unreasonably withheld, providing "cost cap" or "stop loss" coverage for cost overruns associated with implementing the work required by the CERCLA RODs and further providing pollution legal liability or similar coverage, to the extent available, for ~~cleanup of certain~~ Pollution Conditions not addressed by the CERCLA RODs and for third party liability claims associated with Pollution Conditions.

~~f. — A Certificate of Insurance shall be furnished to the Naval Facilities Engineering Command Grants Officer on an annual basis evidencing the above insurance coverage is bound.~~

Section 713. Reports

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within ten (10) business days of the Navy's information request.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

Section 715. Representations

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

~~(3)-(3)~~ any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to ~~Navy Retained Conditions NRCs~~ NRCs, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT

Article VIII
APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

Article IX
PROCUREMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 restoration activities or construction work at such military installations. Any such preference
2 may be given for a contract only if the services to be performed under the contract at the
3 military installation concerned can be carried out in a manner that is consistent with all other
4 actions at the installation that the Secretary is legally required to undertake.

5
6 b. Definition.- In this section, the term "base closure law" means the following:

7
8 (1) The provisions of title II of the Defense Authorization Amendments and
9 Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

10
11 (2) The Defense Base Closure and Realignment Act of 1990, as amended (part
12 A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

13
14 c. Applicability.- Any preference given under subsection (a) shall apply only to
15 contracts entered into after the base closure law was enacted.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT

A r t i c l e X
TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

1 Either party may enforce this Agreement according to its terms. Without limiting either
2 party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement,
3 for noncompliance of Grantee or subgrantee shall include:

4
5 a. ~~Temporary~~Temporarily withholding cash payments pending correction of the
6 deficiency by the SFRA or Sub-grantee or more severe enforcement action by the awarding
7 agency;

8
9 b. Disallowing (denying both use of funds and matching credit for) all or part of the
10 cost of the activity or action that is not in compliance;

11
12 c. Wholly or partly suspending or terminating the current award for the SFRA's or the
13 Sub-grantee's program. Any award termination will be conducted under Section 1003 below.

14
15 d. Withholding further awards under this Agreement; and

16
17 e. Taking other remedies that may be legally available.

18 19 **Section 1003.** Termination

20
21 a. This Agreement may terminate by its own terms under Section 701 above, or by a
22 party under this Section 1003.

23
24 b. Reserved.

25
26 c. Reserved.

27
28 d. If a Party materially breaches this Agreement, the non-breaching party, to
29 preserve its right to terminate, must provide the breaching party with a notice of intent to
30 terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer
31 period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach
32 within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in
33 its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has
34 expired. The existence of a material breach shall be finally determined under the dispute
35 resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary
36 in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from
37 any failure to make a required payment under this Agreement.

38
39 e. If this Agreement is terminated for reasons other than those set forth in Section 701
40 above, the SFRA shall immediately:

41
42 (1) Stop work;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities;

(3) Terminate all subcontracts;

(4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;

(5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and

(6) Return or cause to be returned to the Navy any funds held by the SFRA or the Escrow Agent not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.

f. If this Agreement is terminated under this Section 1003, the status of the parties with respect to ~~Pollution Conditions~~environmental conditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.

g. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT

(2) the costs would be allowable if the Agreement were not otherwise
suspended or expired at the end of the funding period in which the termination takes effect.

b. The enforcement remedies specified in this section do not relieve the SFRA or its
subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25,
including the restrictions on entering into a covered transaction with any party which is
debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal
assistance programs under Executive Order 12549, "Debarment and Suspension."

Article XI
LEGAL AUTHORITY

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably
foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and
conditions of this Agreement. The parties will promptly notify each other of any legal
impediment that arises during the term of this Agreement that may prevent or hinder the party's
abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to
this Agreement, by their authorized representatives, hereby cause this Agreement to be
executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____

NAME:

TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____

Mr. Robert Griffin

Assistant Commander for Acquisition, Naval Facilities Engineering Command

Dated: _____

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

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Description	c:\NetDocs\Navy Clean ETCA 6 25 10.doc
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Padding cell	

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